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CIVIL LOCAL RULES

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1. TITLE; SCOPE; DEFINITIONS

1-1. Title.

These are the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California. They should be cited as "Civil L.R. __."

1-2. Scope, Purpose and Construction.

(a) Scope. These local rules are promulgated pursuant to 28 U.S.C. § 2071 and FRCivP 83. They apply to civil actions filed in this Court. The Court also has promulgated separate local rules in the following subject areas:

(1) Admiralty and Maritime;

(2) Alternative Dispute Resolution;

(3) Bankruptcy;

(4) Criminal Proceedings;

(5) Habeas Corpus Petitions; and

(6) Patent.

(b) Supplement to Federal Rules. These local rules supplement the applicable Federal Rules. They shall be construed so as to be consistent with the Federal Rules and to promote the just, efficient, speedy and economical determination of every action and proceeding.

1-3. Effective Date.

These rules take effect on December 1, 2009. They govern civil cases filed on or after that date. For actions pending on December 1, 2009, if fewer than ten days remain to perform an act otherwise governed by these rules, the provisions of the local rules that were in effect on November 30, 2009, shall apply to that act.

1-4. Sanctions and Penalties for Noncompliance.

Failure by counsel or a party to comply with any duly promulgated local rule or any Federal Rule may be a ground for imposition of any authorized sanction.

1-5. Definitions.

(a) Clerk. "Clerk" refers to the Clerk or a Deputy Clerk of the Court.

(b) Court. Except where the context otherwise requires, the word "Court" refers to the United States District Court for the Northern District of California and to a Judge acting on behalf of that Court with respect to a matter within the Court's jurisdiction.

(c) Day. For computation of time under these local rules, "day" shall have the meaning given in FRCivP 6(a).

(d) *Ex parte*. "Without other party." *Ex parte* means contact with the Court without the advance knowledge or contemporaneous participation of all other parties.

(e) File. "File" means delivery to and acceptance by the Clerk of a document which is approved for filing and which will be included in the official files of the Court and noted in the docket of the case. Under urgent circumstances and for good cause shown, Judges may accept documents for filing.

(f) FRCivP. "FRCivP" means the Federal Rules of Civil Procedure.

(g) FRCrimP. "FRCrimP" means the Federal Rules of Criminal Procedure.

(h) FRAppP. "FRAppP" means the Federal Rules of Appellate Procedure.

(i) Federal Rule. "Federal Rule" means any applicable Federal Rule.

(j) General Orders. "General Orders" are made by the Chief Judge or by the Court relating to Court administration. When the Court deems it appropriate, a General Order also may be used to promulgate modifications of these local rules. Such General Orders shall remain in effect until the rules are properly amended. No litigant may be sanctioned for violating a General Order unless the General Order is adopted by a Judge as a specific order in a particular case.

(k) General Duty Judge. The "General Duty Judge" is the Judge at each division or location of the Court designated by the Chief Judge to act for the Court in matters for which there is no assigned Judge, or when the assigned Judge is unavailable. The name of the Judge serving as General Duty Judge shall be made available by the office of the Clerk.

(l) Judge. Unless the context otherwise indicates, the term "Judge," or "assigned Judge" refers to any United States District Judge, any United States Bankruptcy Judge, or to any full-time or part-time United States Magistrate Judge.

(m) Lodge. When a statute, rule or order permits a document to be submitted to the Court but does not permit the document to be "filed" (e.g., settlement conference statement, deposition transcripts or a proposed trial exhibit), the document may be "lodged" with the Clerk's office. The Clerk will stamp the document "Received" and promptly deliver it to the Chambers of the Judge for whom the document is intended. A party who subsequently seeks to have a lodged document "filed" within the meaning of Civil L.R. 1-5(e) may move for an order directing that the document be included in the official files of the Court and in the docket of the case.

(n) Meet and confer. "Meet and confer" or "confer" means to communicate directly and discuss in good faith the issue(s) required under the particular Rule or order. Unless these Local Rules otherwise provide or a Judge otherwise orders, such communication may take place by telephone. The mere sending of a written, electronic, or voice-mail communication, however, does not satisfy a requirement to "meet and confer" or to "confer." Rather, this requirement can be satisfied only through direct dialogue and discussion – either in a face to face meeting or in a telephone conversation.

Commentary

See FRCivP 26(f), as amended December 1, 2000.

(o) Standing Orders of Individual Judges. "Standing Orders" are orders by a Judge governing the conduct of a class or category of actions or proceedings assigned to that Judge. It is the policy of the Court to provide notice of any applicable Standing Orders to parties before they are subject to sanctions for violating such orders. Nothing in these local rules precludes a Judge from issuing Standing Orders to govern matters not covered by these local rules or by the Federal Rules.

(p) Unavailability. This Court is in continuous session. To the extent reasonably feasible, each active Judge of this Court will be available at his or her assigned courthouse during the normal hours of the Clerk of Court established pursuant to Civil L.R. 77-1. A Judge who will be absent from the District for one court day or more shall post a notice to that effect on the official calendar of the Court. If a Judge is unavailable, any motion or matter requesting immediate judicial determination shall be referred to the General Duty Judge at that courthouse. If the General Duty Judge is unavailable, the Clerk shall assign the matter to any available Judge at that courthouse or of this Court.

3. COMMENCEMENT AND ASSIGNMENT OF ACTION

3-1. Regular Session.

The Court shall be in continuous session in the following locations: San Francisco Division, Oakland Division and San Jose Division. From time to time sessions may be held at other locations within the district as the Court may order.

3-2. Commencement and Assignment of Action.

(a) Civil Cover Sheet. Every complaint, petition or other paper initiating a civil action must be filed with a completed civil cover sheet on a form approved by the Court.

Cross Reference

See Civil L.R. 3-6(c) *"Jury Demand; Marking of Civil Cover Sheet Insufficient;"* Civil L.R. 3-7(a) *"Civil Cover Sheet Requirement in Private Securities Actions"*

(b) Commencement of Action. An action may be commenced within the meaning of FRCivP 3 at any office of the Clerk for this district. After the matter has been assigned to a Judge, unless ordered or permitted otherwise, all subsequent filings must be made in the Office of the Clerk at the division or location where the assigned Judge maintains chambers. Paper filings in matters assigned to the Eureka division must be made in the San Francisco Office of the Clerk.

(c) Assignment to a Division. Pursuant to the Court's Assignment Plan, except for Intellectual Property Actions, Securities Class Actions and Capital and Noncapital Prisoner Petitions or Prisoner Civil Rights Actions, upon initial filing, all civil actions and proceedings for which this district is the proper venue shall be assigned by the Clerk to a Courthouse serving the county in which the action arises. A civil action arises in the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated. Actions in the excepted categories shall be assigned on a district-wide basis.

(d) San Francisco and Oakland. Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo or Sonoma shall be assigned to the San Francisco Division or the Oakland Division.

(e) San Jose. Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of Santa Clara, Santa Cruz, San Benito or Monterey shall be assigned to the San Jose Division.

(f) Eureka. Except as provided in Civil L.R. 3-2(c), all civil actions which arise in the counties of Del Norte, Humboldt, Lake and Mendocino, except for cases not assigned to the magistrate judges pursuant to the Court's Assignment Plan, shall be assigned to the Eureka Division.

Cross Reference
See General Order No. 44, Assignment Plan.

(g) Assignment of Action to the Eureka Division. All cases assigned to the Eureka Division shall be assigned to the full-time magistrate judge presiding in that division. Such assignments are subject to the provisions of Civil L.R. 73 and require the consent of the parties. Any case for which all parties do not consent will be reassigned to a district judge in one of the Bay Area divisions.

(h) Transfer of Actions and Proceedings. Whenever a Judge finds, upon the Judge's own motion or the motion of any party, that a civil action has not been assigned to the proper division within this district in accordance with this rule, or that the convenience of parties and witnesses and the interests of justice will be served by transferring the action to a different division within the district, the Judge may order such transfer, subject to the provisions of the Court's Assignment Plan.

3-3. Assignment of Action to a Judge.

(a) Assignment. Immediately upon the filing of any civil action and its assignment to a division of the Court pursuant to Civil L.R. 3-2, the Clerk shall assign it to a Judge pursuant to the Assignment Plan of the Court. The Clerk may not make or change any assignment, except as provided in these local rules or in the Assignment Plan (General Order No. 44).

(b) Multiple Filings. Any single action filed in more than one division of this Court shall be transferred pursuant to Civil L.R. 3-2(f).

(c) Refiled Action. If any civil action or claim of a civil action is dismissed and is subsequently refiled, the refiling party must file a Motion to Consider Whether Cases Should be Related pursuant to Civil L.R. 3-12. Upon a determination by a Judge that an action or claim pending before him or her is covered by this Local Rule, that Judge may transfer the refiled action to the Judge originally assigned to the action which had been dismissed. Any party who files an action in multiple divisions or dismisses an action and subsequently refiles it for the purpose of obtaining an assignment in contravention of Civil L.R. 3-3(b) shall be subject to appropriate sanctions.

3-4. Papers Presented for Filing.

(a) First Page Requirements. The first page of each paper presented for filing must set forth:

(1) The name, address, telephone number, facsimile ("fax") telephone number, e-mail address and state bar number of counsel (or, if *pro se*, the name, address, telephone number, fax telephone number and e-mail address of the party) presenting the paper for filing. This information must appear in the upper left hand corner and must indicate the party represented by name as well as that party's status in the litigation (i.e., plaintiff, defendant, etc.). In multiparty actions or proceedings, reference may be made to the signature page for the complete list of parties represented;

Cross Reference

See Civil L.R. 3-9 "Parties"; Civil L. R. 3-11 *"Failure to Notify of Address Change*;" and Civil L.R. 11-3(d) "*Appearances and Service on Local Co-Counsel*.

(2) If not proceeding *pro se* and if proceeding *pro hac vice* in conformity with Civil L.R. 11-3, following the information required in Civil L.R. 3-4(a)(1) the name, address, telephone and state bar number of the member of the bar of the Court who maintains an office within the State of California; and

(3) Commencing on the eighth line of the page (except where additional space is required for counsel identification) there must appear:

(A) The title of this Court, including the appropriate division or location;

(B) The title of the action;

(C) The case number of the action followed by the initials of the assigned District Judge or Magistrate Judge and, if applicable, the initials of the Magistrate Judge to whom the action is referred for discovery or other pretrial activity;

(D) A title describing the paper; and

(E) Any other matter required by Civil L.R. 3.

(4) Any complaint or Notice of Removal of Action seeking review of federal agency determinations in immigration cases, Privacy Act cases, or Administrative Procedure Act cases must include, under the title of the document, whichever of the following is applicable: "Immigration Case," "Privacy Act Case," or "Administrative Procedure Act Case."

(5) Presentation of Class Action. If any complaint, counterclaim or cross-claim is sought to be maintained as a class action, it must bear the legend "Class Action" on its first page below the title describing the paper as a complaint, counterclaim or cross-claim.

(b) Caption for Consolidated Cases. When filing papers in cases consolidated pursuant to FRCivP 42, the caption of each paper must denote the lead case number above all consolidated case numbers. Duplicate originals, however, are not required for associated cases.

(c) General Requirements.

(1) Paper. Except for reporter transcripts, all papers presented for filing must be on top-centered, two-hole punched, 8-1/2 inch by 11 inch white opaque paper of original or recycled bond quality with numbered lines, and must be flat, unfolded (except where necessary for the presentation of exhibits), without back or cover, and firmly bound at the top.

(2) Written Text. Text must appear on one side only and must be double-spaced with no more than 28 lines per page, except for the identification of counsel, title of the case, footnotes and quotations. Typewritten text may be no less than standard pica or 12-point type in the Courier font or equivalent, spaced 10 characters per horizontal inch. Printed text, produced on a word processor or other computer, may be proportionally spaced, provided the type may not be smaller than 12-point standard font (e.g., Times New Roman). The text of footnotes and quotations must also conform to these font requirements.

(3) Identification of Paper. Except for exhibits, each paper filed with the Court must bear a footer on the lower margin of each page stating the title of the paper (e.g., "Complaint," "Defendant's Motion for Summary Judgment," etc.) or some clear and concise abbreviation. Once the Court assigns a case number to the action that case number must be included in the footer.

Commentary

When a case is first filed, the footer on each page of the complaint need only bear the title of the paper (e.g., "Complaint"); but after assignment of a case number on filing, that number must be included in footers on any subsequently prepared papers (e.g., "Defendant's Motion for Summary Judgment - C-95-90345 ABC.")

(d) Citation to Authorities. Unless otherwise directed by the assigned Judge, citation to authorities in any paper must include:

(1) In any citation to Acts of Congress, a parallel citation to

the United States Code by title, section and date;

(2) In any citation to U.S. regulations, a citation to the Code of Federal Regulations by title and section, and the date of promulgation of the regulation;

(3) In any citation to a U.S. Supreme Court Case, a citation to United States Reports, Lawyers' Edition or Supreme Court Reporter must be used. If the case is not yet available in any of those formats but is available on electronic databases, citation must indicate the database, year and any screen or page numbers, if assigned;

(4) In any citation to other federal courts, unless an alternate reporting service is widely available, a citation to the Federal Reporter, Federal Supplement or Federal Rules Decisions must be used. If the case is not yet available in those formats but is available on electronic databases, citation must indicate the database, year and any screen or page numbers, if assigned; and

(5) In any citation to a state court, citations must include either the official reports or any official regional reporting service (e.g., West Publishing). If the case is not yet available in those formats but is available on electronic databases, citation must indicate the database, year and any screen or page numbers, if assigned.

(e) Prohibition of Citation to Uncertified Opinion or Order. Any order or opinion that is designated: "NOT FOR CITATION," pursuant to Civil L.R. 7-14 or pursuant to a similar rule of any other issuing court, may not be cited to this Court, either in written submissions or oral argument, except when relevant under the doctrines of law of the case, *res judicata* or collateral estoppel.

Cross Reference

See Civil L.R. 7-14 *"Designation 'Not For Citation'."* See also Ninth Circuit Court of Appeals Rule 36-3.

3-5. Jurisdictional Statement.

(a) Jurisdiction. Each complaint, petition, counterclaim and cross-claim must include a separate paragraph entitled "Jurisdiction." The paragraph will identify the statutory or other basis for federal jurisdiction and the facts supporting such jurisdiction.

(b) Intradistrict Assignment. Each complaint or petition must include a paragraph entitled "Intradistrict Assignment." The paragraph must identify any basis for assignment to a particular location or division of the Court pursuant to Civil L.R. 3-2(c).

3-6. Jury Demand.

(a) Included in Pleading. A party may demand a jury trial as provided in FRCivP 38(b). When a demand for jury trial is included in a pleading, the demand must be set forth at the end of the pleading. When the demand is made by a party who is represented by counsel, the pleading must be signed by the attorney for the party making the demand. In the caption of such pleading, immediately following the title of the pleading, the following must appear: "DEMAND FOR JURY TRIAL."

(b) Marking of Civil Cover Sheet Insufficient. Marking the civil cover sheet to indicate a demand for jury trial is not a sufficient demand to comply with this Local Rule.

Commentary

See Wall v. National Railroad Passenger Corp., 718 F.2d 906 (9th Cir. 1983).

3-7. Filing and Certification in Private Securities Actions.

(a) Civil Cover Sheet Notation Requirement. If a complaint or other pleading contains a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), the following must be so noted in Block VI of the civil cover sheet: "Private Securities Litigation Reform Act."

Cross Reference

See Civil L.R. 23-1 *"Private Securities Actions."*

(b) Certification by Filing Party Seeking to Serve as Lead Plaintiff. Any person or group of persons filing a complaint and seeking to serve as lead plaintiff in a civil action containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), must serve and file with the initial pleading a certificate under penalty of perjury which contains the following averments:

(1) The party has reviewed the complaint and authorized its filing;

(2) The party did not engage in transactions in the securities which are the subject of the action at the direction of plaintiff's counsel or in order to participate in this or any other litigation under the securities laws of the United States;

(3) The party is willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary;

(4) The party has made no transactions during the class period in the debt or equity securities that are the subject of the action except those set forth in the certificate (as used herein, "equity security" shall have the same meaning as that term has for purposes of section 16(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78p(a));

(5) The party has not, within the three years preceding the date of the certification, sought to serve or served as a representative party on behalf of a class in an action involving alleged violations of the federal securities laws, except as set forth in the certificate; and

(6) The party will not accept any payment for serving as representative on behalf of a class beyond the party's pro rata share of any recovery, unless ordered or approved by the Court pursuant to section 27(a)(4) of the Securities Act, 15 U.S.C. § 77z-1(a)(4), or section 21D(a)(4) of the Securities Exchange Act, 15 U.S.C. § 78u-4(a)(4).

(c) Certification by Nonfiling Party Seeking to Serve as Lead Plaintiff. Any party seeking to serve as lead plaintiff, but who does not also file a complaint, need not file the certification required in Civil L.R. 3-7(b), but must at the time of initial appearance state that the party has reviewed a complaint filed in the action and either:

(1) Adopts its allegations or, if not,

(2) Specifies the allegations the party intends to assert.

(d) Certification by Lawyers Seeking to Serve as Class Counsel. Each lawyer seeking to serve as class counsel in any civil action containing a cause of action governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), must serve and file a certificate under penalty of perjury which either:

(1) Affirms that the lawyer does not directly own or otherwise have a beneficial interest in securities that are the subject of the action; or

(2) Sets forth with specificity the extent of any such ownership or interest and explains why that ownership or interest does not constitute a conflict of interest sufficient to disqualify the attorney from representing the class.

Cross Reference

See also Civil L.R. 23 "*Class Actions*."

3-8. Claim of Unconstitutionality.

(a) Federal Statute. In any action in which the constitutionality of an Act of Congress is questioned and neither the United States nor any officer, agency or employee thereof is a party, counsel raising the question must file a notice of such claim with the assigned Judge (or, if no assignment has been made, the Chief Judge) and serve a copy of such notice on the United States Attorney for this district. The notice must identify the statute and describe the basis for the claim that it is unconstitutional. The party must file the notice with a certificate of service pursuant to Civil L.R. 5-6.

(b) State Statute. In any action in which the constitutionality of a state statute is questioned and neither the state nor an agency, officer or employee of the state is a party, counsel raising the question must file notice of such claim with the assigned Judge (or, if no assignment has been made, the Chief Judge) and serve a copy of such notice on the State Attorney General. The notice must identify the statute and describe the basis for the claim that it is unconstitutional. The party must file the notice with a certificate of service pursuant to Civil L.R. 5-6.

Cross Reference

See 28 U.S.C. § 2403.

3-9. Parties.

(a) Natural Person Appearing *Pro Se*. Any party representing him or herself without an attorney must appear personally and may not delegate that duty to any other person who is not a member of the bar of this Court. A person representing him or herself without an attorney is bound by the Federal Rules, as well as by all applicable local rules. Sanctions (including default or dismissal) may be imposed for failure to comply with local rules.

Cross Reference

See Civil L.R. 11-1 "*The Bar of this Court.*"

(b) Corporation or Other Entity. A corporation, unincorporated association, partnership or other such entity may appear only through a member of the bar of this Court.

Cross Reference

See Civil L.R. 11-1 "*The Bar of this Court.*"

(c) Government or Governmental Agency. When these rules require an act be done personally by the party, and the party is a government or a governmental agency, the act must be done by a representative of the government or governmental agency who is knowledgeable about the facts of the case and the position of the government, and who has, to the greatest extent feasible, authority to do the required act.

Cross Reference

See Civil L.R. 11-2 "*Attorneys for the United States.*" See also ADR L.R. 5-10(a)(2) and 6-9(a)(2).

3-10. *Ex Parte* Motion to Proceed *In Forma Pauperis.*

(a) Motion to Proceed *In Forma Pauperis.* At the commencement of an action, any person wishing the Court to authorize prosecution of the action without payment of fees or security, pursuant to 28 United States Code § 1915, must submit, with the proposed complaint, an *Ex Parte* Motion to Proceed *In Forma Pauperis*, pursuant to Civil L.R. 7-10(a). The Clerk shall file the complaint, assign a case number and deliver a copy of the complaint and motion to the Chambers of the assigned Judge for determination.

(b) Content of Motion. The motion must contain:

(1) A request to proceed *in forma pauperis*;

(2) An affidavit or declaration under penalty of perjury providing the information required by Title 28 U.S.C. § 1915, on a form available at the Office of the Clerk and on the Court's Internet site, or an equivalent form; and

(3) A proposed order.

(c) Determination of the Motion. The Judge may grant the motion, grant the motion subject to partial payment of fees, costs or security, or deny the motion. If the motion is granted in part or denied, the order will state that the action is dismissed unless any outstanding fees, costs or security is paid within the time set in the order.

Commentary

If, during the pendency of an action, any person wishes to prosecute or defend an action *in forma pauperis,* the person must file an Administrative Motion to Proceed *In Forma Pauperis* pursuant to Civil L.R. 7-10(b).

3-11. Failure to Notify of Address Change.

(a) Duty to Notify. An attorney or a party proceeding *pro se* whose address changes while an action is pending must promptly file with the Court and serve upon all opposing parties a Notice of Change of Address specifying the new address.

(b) Dismissal Due to Failure. The Court may, without prejudice, dismiss a complaint or strike an answer when:

(1) Mail directed to the attorney or *pro se* party by the Court has been returned to the Court as not deliverable; and

(2) The Court fails to receive within 60 days of this return a written communication from the attorney or *pro se* party indicating a current address.

3-12. Related Cases.

(a) Definition of Related Cases. An action is related to another when:

(1) The actions concern substantially the same parties, property, transaction or event; and

(2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.

(b) Administrative Motion to Consider Whether Cases Should be Related. Whenever a party knows or learns that an action, filed in or removed to this district is (or the party believes that the action may be) related to an action which is or was pending in this District as defined in Civil L.R. 3-12(a), the party must promptly file in the earliest-filed case an Administrative Motion to Consider Whether Cases Should be Related, pursuant to Civil L.R. 7-11. In addition to complying with Civil L.R. 7-11, a copy of the motion, together with proof of service pursuant to Civil L.R. 5-6, must be served on all known parties to each apparently related action. A Chambers copy of the motion must be lodged with the assigned Judge in each apparently related case under Civil L.R. 5-1(b).

(c) *Sua Sponte* Judicial Referral for Purpose of Determining Relationship. Whenever a Judge believes that a case pending before that Judge is related to another case, the Judge may refer the case to the Judge assigned to the earliest-filed case with a request that the Judge assigned to the earliest-filed case consider whether the cases are related. The referring Judge shall file and send a copy of the referral to all parties to all affected cases. The parties must file any response in opposition to or support of relating the cases pursuant to Civil L.R. 3-12(d). Alternatively, a Judge may order the parties to file a motion pursuant to Civil L.R. 3-12(b).

(d) Content of Motion. An Administrative Motion to Consider Whether Cases Should be Related must contain:

(1) The title and case number of each apparently related case;

(2) A brief statement of the relationship of the actions according to the criteria set forth in Civil L.R. 3-12(a).

(e) Response to Motion. Any opposition to or support of a Motion to Consider Whether Cases Should be Related must be filed in the earliest filed case pursuant to Civil L.R. 7-11. The opposition or statement of support must specifically address the issues in Civil L.R. 3-12(a) and (d) and be served on all parties and lodged with the Chambers of all Judges identified in the motion. If the motion identifies more than two potentially related cases, and a party contends that not all of the cases are related, the party must address whether any of the cases are related to one another.

(f) Order Granting or Denying Relationship. Upon a motion by a party or a referral by another Judge, after the time for filing support or opposition to the Motion to Consider Whether Cases Should Be Related has passed, the Judge in this District who is assigned to the earliest-filed case will decide if the cases are or are not related and will notify the Clerk, who, in turn, will notify the parties.

(1) Due to the need for parties and affected Judges to have a speedy determination of the motion or referral, the Judge assigned to the earliest-filed case shall act on the motion or referral within 14 days after the date a response is due. If the Judge assigned to the earliest-filed case is not available for that period, the Clerk or counsel may bring the motion or referral to the General Duty Judge.

(2) If the Judge assigned to the earliest-filed case decides that the cases are not related, no change in case assignment will be made. In cases where there are more than two potentially related cases, the Clerk shall submit the order to the Judges assigned to the other cases in order of filing with a form of order to decide within 14 days if the cases are or are not related. If no Judge relates any of the remaining cases, no change in case assignment will be made.

(3) If any Judge decides that any of the cases are related, pursuant to the Assignment Plan, the Clerk shall reassign all related later-filed cases to that Judge and shall notify the parties and the affected Judges accordingly.

(g) Effect of Order on Case Schedule. The case management conference in any reassigned case will be rescheduled by the newly assigned Judge. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless the assigned Judge otherwise orders, upon reassignment, any deadlines set by the ADR Local Rules remain in effect and any dates for hearing noticed motions are automatically vacated and must be renoticed by the moving party before the newly assigned Judge. For cases ordered related after the initial case management conference, unless the assigned Judge otherwise orders, any deadlines established in the case management order shall continue to govern, except for the trial date, which will be rescheduled by the assigned Judge.

3-13. Notice of Pendency of Other Action or Proceeding.

(a) Notice. Whenever a party knows or learns that an action filed or removed to this district involves all or a material part of the same subject matter and all or substantially all of the same parties as another action which is pending in any other federal or state court, the party must promptly file with the Court in the action pending before this Court and serve all opposing parties in the action pending before this Court with a Notice of Pendency of Other Action or Proceeding.

(b) Content of Notice. A Notice of Pendency of Other Action or Proceeding must contain:

(1) A description of the other action;

(2) The title and location of the court in which the other action or proceeding is pending; and

(3) A brief statement of:

(A) The relationship of the other action to the action or proceeding pending in this district; and

(B) If the other action is pending in another U.S. District Court, whether transfer should be effected pursuant to 28 U.S.C. § 1407 (Multi District Litigation Procedures) or whether other coordination might avoid conflicts, conserve resources and promote an efficient determination of the action; or

(C) If the other action is pending before any state court, whether proceedings should be coordinated to avoid conflicts, conserve resources and promote an efficient determination of the action.

(c) Procedure After Filing. No later than 14 days after service of a Notice of Pendency of Other Action, any party may file with the Court a statement supporting or opposing the notice. Such statement will specifically address the issues in Civil L.R. 3-13(b).

(d) Order. After the time for filing support or opposition to the Notice of Pendency of Other Actions or Proceedings has passed, the Judge assigned to the case pending in this district may make appropriate orders.

3-14. Transfer of Action to Another District.

An order transferring an action to another district shall become effective 14 days after it is filed, unless the order specifies a specific effective date.

3-15. Disqualification of Assigned Judge.

Whenever an affidavit of bias or prejudice directed at a Judge of this Court is filed pursuant to 28 U.S.C. § 144, and the Judge has determined not to recuse him or herself and found that the affidavit is neither legally insufficient nor interposed for delay, the Judge shall refer the request for disqualification to the Clerk for random assignment to another Judge.

Commentary

Recusal under 28 U.S.C. § 455 is normally undertaken by a Judge *sua sponte*. However, counsel may bring the issue to a Judge's attention by formal motion or raise it informally at a Case Management Conference or by a letter to the Judge, with a copy to the other parties in the case. This rule does not preclude a Judge from referring matters arising under 28 U.S.C. § 455 to the Clerk so that another Judge can determine disqualification. See also Civil L.R. 3-16.

3-16. Disclosure of Non-party Interested Entities or Persons.

(a) Policy. So that Judges of this Court may evaluate any need for disqualification or recusal early in the course of any case, each party to any civil proceeding must file a "Certification of Interested Entities or Persons" pursuant to this Rule. The Rule does not apply to any governmental entity or its agencies.

(b) Certification. Upon making a first appearance in any proceeding in this Court, a party must file with the Clerk a "Certification of Interested Entities or Persons."

(1) The Certification must disclose any persons, associations of persons, firms, partnerships, corporations (including parent corporations), or other entities other than the parties themselves known by the party to have either: (i) a financial interest (of any kind) in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

(2) For purposes of this Rule, the terms "proceeding" and "financial interest" shall have the meaning assigned by 28 U.S.C. 455 (d)(1), (3) and (4), respectively.

(3) If a party has no disclosure to make pursuant to subparagraph (b)(1), that party must make a certification stating that no such interest is known other than that of the named parties to the action.

(c) Form of Certification. The Certification of Interested Entities or Persons must take the following form, as is appropriate to the proceeding:

(1) If there is an interest to be certified: "Pursuant to Civil L.R. 3-16, the undersigned certifies that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding: (List names and identify their connection and interest). Signature, Attorney of Record."

(2) If there is no interest to be certified: "Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report. Signature, Attorney of Record."

(3) Certification, pursuant to this subsection, must be filed as a separate document.

3-17. Privacy.

(a) Documents Filed in the Public File. In compliance with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties must refrain from including, or must redact where inclusion is necessary, the following personal data identifiers from all pleadings and other papers filed in the public file, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Court.

(1) Social Security Numbers. If an individual's social security number must be included in a pleading or other paper filed in the public file, only the last four digits of that number should be used.

(2) Names of Minor Children. If the involvement of a minor child must be mentioned in a pleading or other paper filed in the public file, only the initials of that child should be used.

(3) Dates of Birth. If an individual's date of birth must be included in a pleading or other paper filed in the public file, only the year should be used.

(4) Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be included in a pleading or other paper filed in the public file.

(b) Documents Filed in Criminal Cases. In addition to the redaction of personal identifiers required in part (a) of this rule and in compliance with the policy of the Judicial Conference of the United States, if a home address must be included in a pleading or other paper filed in the public file in a criminal case, only the city and state should be listed.

(c) Documents Filed in Social Security Administrative Review Cases. Paper filings of transcripts of administrative records in social security review cases are not subject to the requirements of part (a) of this local rule.

(d) Documents Filed Under Seal. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal pursuant to Local Rule 79-5, or may file a reference list under seal pursuant to Civil L.R. 79-5. The reference list must contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, subject to the provisions of Civil L.R. 79-5, and may be amended as of right. The unredacted version of the document or the reference list will be retained by the Court as part of the record. The party must file a redacted copy for the public file.

(e) Responsibility. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each pleading or other paper for compliance with this rule.

4. PROCESS: ISSUANCE AND SERVICE

4-1. Limitation on Service by Marshal.

Except for service on behalf of the United States or as required by FRCivP 4(c)(2), or unless the Court orders otherwise for good cause shown, service of summons in a civil action shall not be made by the United States Marshal.

Commentary

28 U.S.C. § 566(c) provides that the United States Marshal shall execute writs, process and orders issued under the authority of the United States.

4-2. Service of Supplementary Material.

Along with the complaint and the summons or request for waiver of service, a party subject to Civil L.R. 16-2(a), (b), or (c), must serve the following Supplementary Material:

(a) A copy of the Order Setting Initial Case Management Conference and ADR deadlines issued pursuant to Civil L.R. 16-2(a), (b) or (c);

(b) Any pertinent Standing Orders of the assigned Judge;

(c) A copy of the assigned judge's order and instructions for the preparation of a Case Management Statement or, if none, the Court's form found at Appendix A, pursuant to Civil L.R. 16-10; and

(d) Except in cases assigned at the time of filing to a Magistrate Judge, a copy of the form allowing a party to consent to assignment of the case to a Magistrate Judge.

Commentary

The Clerk will provide the filing party with a copy of the Order Setting Initial Case Management Conference and ADR Deadlines, form for Consent to Assignment of the Case to a Magistrate Judge, form for preparation of the Case Management Statement, and any pertinent Standing Orders. The party must make copies of the schedules and forms for service. The Court's ADR processes and procedures are described in the handbook entitled "Dispute Resolution Procedures in the Northern District of California" on the Court's ADR Internet site, www.adr.cand.uscourts.gov. Limited printed copies of the ADR handbook are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

5-1. Filing Original and Submitting Chambers Copy.

(a) Filing Original. Except as provided in Civil L.R. 5-2, the original of any document required to be filed by the Federal Rules or by these local rules, together with a certificate of service, must be delivered to the Office of the Clerk during regular hours (as defined in Civil L.R. 77-1(b)) in the courthouse in which the chambers of the Judge to whom the action has been assigned pursuant to Civil L.R. 3-3(a) are located. Certain documents may be filed after regular hours by depositing them in a drop-box pursuant to Civil L.R. 5-3. Filing by electronic means, pursuant to Civil L.R. 5-4, may be required in certain actions. The Clerk will provide notification of any such requirement.

(b) Extra Copy for Chambers. An extra copy of the document filed under Civil L.R. 5-1(a), marked by counsel as the copy for "Chambers," must be submitted at the same time to the Office of the Clerk in the courthouse in which the chambers of the Judge to whom the action has been assigned are located. If the matter has been assigned to a Magistrate Judge for hearing, an additional copy designated for delivery to the assigned Magistrate Judge must be delivered to the Office of the Clerk in the courthouse in which the chambers of the Magistrate Judge are located. If the matter has been assigned to the Eureka venue, the extra copy must be mailed to the chambers of the Eureka Magistrate Judge, P.O. Box 1306, Eureka California 95502.

Commentary

When a copy for chambers is delivered to the Office of the Clerk in conformity with Civil L.R. 5-1(b), counsel will be deemed to have complied with any order requiring delivery of that document to the chambers of the assigned Judge.

5-2. Facsimile Filings.

(a) Method of Filing. In lieu of filing an original document pursuant to Civil L.R. 5-1(a), a party or a party's agent may file with the Court a facsimile ("fax") copy of the original document pursuant to this rule. For purposes of this rule, any fax filing agency shall be regarded as an agent of the filing party, not an agent of the Court. Also for purposes of this rule, the image of the original manual signature appearing on a fax copy filed pursuant to this rule shall constitute an original signature for all court purposes.

(b) Procedures. Fax copies may be filed as follows:

(1) The fax copy is <u>not</u> transmitted directly to the Clerk by electronic or telephonic means;

(2) The fax copy is delivered to the Office of the Clerk at the location of the chambers of the Judge to whom the case has been assigned pursuant to Civil L.R. 3-3(a);

(3) The fax copy complies with the requirements of Civil L.R. 3-4; and

(4) The fax copy is accompanied by a certificate of service, as well as an additional copy of the document marked as a copy for "Chambers" (and if the matter has been assigned to a Magistrate Judge for hearing, an additional copy designated for delivery to the chambers of the assigned Magistrate Judge).

(c) Disposition of the Original Document. The following procedures shall govern disposition of the original document whenever a fax copy is filed pursuant to Civil L.R. 5-2(b):

(1) The original signed document shall not be substituted into the Court's records, except upon Court order;

(2) Any party filing a fax copy of a document must maintain the original transmitted document and the transmission record of that document until the conclusion of the case, including any applicable appeal period. A transmission record for purposes of this rule is a paper printed by the facsimile machine upon which the original document was transmitted. The record must state the telephone number of the receiving machine, the number of pages sent, the transmission time and an indication that no error in transmission occurred.

(3) Upon request by a party or the Court, the filing party must provide for review the original transmitted document from which a fax copy was produced.

5-3. Drop Box Filings.

(a) Documents Which May Be Filed. Most documents to be filed pursuant to Civil L.R. 5-1(a) may be deposited in a Clerk's Office drop box, subject to the following:

(1) Any papers in support of or in opposition to a matter scheduled for hearing within 7 days of filing may not be filed through use of a drop box;

(2) Initial pleadings or petitions to be filed prior to the assignment of a Judge may be deposited for filing in a drop box at any courthouse of the district -- and any applicable filing fee must be included, with payment only in the form of a check;

(3) Except for documents covered by (a)(1), above, after regular hours of the Clerk's Office a document to be filed pursuant to Civil L.R. 5-1(a) may be filed by deposit in the Clerk's Office drop box at the courthouse in which the Chambers of the assigned Judge are located.

(b) Drop Box Locations and Availability. The Court will maintain drop boxes at each division of the Clerk's Office. The Clerk will regulate the hours during which materials may be filed through use of a drop box.

Commentary

Questions regarding availability and use of the drop box should be directed to the Clerk. The Clerk has set the following schedule for location and availability of drop boxes:

Drop Box Location	Availability	Restrictions
Clerks Office Entrance 16th Floor 450 Golden Gate Avenue San Francisco	Before 9:00 a.m. and After 4:00 p.m.	Federal Building closed to public after 6:00 p.m. and before 6:00 a.m. on weekdays, and all weekends and federal holidays.
Courthouse Lobby First Floor 1301 Clay Street Oakland	Before 9:00 a.m. and After 4:00 p.m.	Federal Building closed to public after 5:00 p.m. and before 7:00 a.m., and on weekends and federal holidays.
Clerks Office Entrance Second Floor 280 South 1st Street San Jose	Before 9:00 a.m. and After 4:00 p.m.	Federal Building closed to public after 5:00 p.m. and before 7:30 a.m., and on weekends and federal holidays.

(c) Filing Date of Drop Box Documents. Before deposit of a document for filing in a drop box, the back side of the last page of the document must be stamped "Received" using the device available at the drop box.

(1) The document will be marked by the Clerk as "Filed" on the same date indicated by the "Received" stamp, except when the "Received" date is a weekend or Court holiday, in which case it will be marked as "Filed" on the first day following the weekend or Court holiday.

(2) Where the back side of the last page of the document has not been stamped "Received" with the device available at the drop box, the Clerk will mark the document as "Filed" on the day the Clerk emptied the drop box of the document.

Commentary

Questions regarding availability and use of the drop box should be directed to the Clerk. The Clerk's Office policy is to empty and lock the drop box at the beginning of each day when the Clerk's Office opens. When the Clerk's Office closes, the drop box is reopened so that it may be used again for filing.

5-4. Electronic Case Filings.

Pursuant to FRCivP 5(d)(3), the Clerk will accept in certain actions documents filed, signed or verified by electronic means that are consistent with General Order No. 45, "Electronic Case Filing." A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules and the Federal Rules of Civil Procedure. The Clerk will provide notification in any case in which documents must be filed electronically.

Commentary

General Orders for the Northern District of California may be obtained at the following Internet site: http://www.cand.uscourts.gov Requests for a printed version of General Order No. 45 should be addressed to: Guidelines for Electronic Case Filing, Clerk, U.S. District Court, 450 Golden Gate Avenue, San Francisco, CA 94102. Please enclose a stamped, self-addressed return envelope bearing first class postage.

5-5. Manner of Service.

(a) Cases Not Subject to Electronic Case Filing. Whenever, by Court order or under these local rules, a pleading or other paper must be "served" upon the attorney for a party or the party by a certain date or time, the serving party must comply with one of the following procedures on or before the due date:

(1) The pleading or paper must be actually delivered to the receiving attorney or party within the meaning of FRCivP 5(b) on or before the due date. Delivery to a party may be made by private or commercial delivery service or electronically, such as by facsimile transmission or electronic mail; or

(2) If the serving party elects to send the pleading or paper by mail, it must be mailed 3 days before the due date, except that service by mail may not be used if a Local Rule requires delivery of a pleading or paper.

(b) Cases Subject to Electronic Case Filing. In cases subject to the Local Rules or General Orders of this Court regarding Electronic Case Filing, all pleadings and papers must be electronically served in accordance with those Rules or General Orders.

Cross Reference

See General Order No. 45, "Electronic Case Filing Guidelines Sec. IX."

5-6. Certificate of Service.

(a) Form. Whenever any pleading or other paper presented for filing is required (or permitted by any rule or other provision of law) to be served upon any party or person, it must bear or have attached to it:

(1) An acknowledgment of service by the person served; or

(2) Certificate of service stating the date, place and manner of service and the names street address or electronic address of the persons served, certified by the person who made service, pursuant to 28 U.S.C. §1746.

(b) Sanction for Failure to Provide Certificate. Failure to provide an acknowledgment or certificate of service shall not be a ground for the Clerk refusing to file a paper or pleading. However, any such document may be disregarded by the Judge if an adverse party timely objects on the ground of lack of service.

Cross Reference

See FRCivP 4(d).

Commentary

Pursuant to General Order No. 45, parties are not required to include a certificate or acknowledgment of service upon registered ECF users when a document is filed electronically. Notification to those parties will be provided by the court's electronic filing system.

6. TIME

6-1. Enlarging or Shortening Time.

(a) When Stipulation Permissible Without Court Order. Parties may stipulate in writing, without a Court order, to extend the time within which to answer or otherwise respond to the complaint, or to enlarge or shorten the time in matters not required to be filed or lodged with the Court, provided the change will not alter the date of any event or any deadline already fixed by Court order. Such stipulations shall be promptly filed pursuant to Civil L.R. 5.

(b) When Court Order Necessary to Change Time. A Court order is required for any enlargement or shortening of time that alters an event or deadline already fixed by Court order or that involves papers required to be filed or lodged with the Court (other than an initial response to the complaint). A request for a Court order enlarging or shortening time may be made by written stipulation pursuant to Civil L.R. 6-2 or motion pursuant to Civil L.R. 6-3. Any stipulated request or motion which affects a hearing or proceeding on the Court's calendar must be filed no later than 14 days before the scheduled event.

6-2. Stipulated Request for Order Changing Time.

(a) Form and Content. The parties may file a stipulation, conforming to Civil L.R. 7-12, requesting an order changing time that would affect the date of an event or deadline already fixed by Court order, or that would accelerate or extend time frames set in the Local Rules or in the Federal Rules. The stipulated request must be accompanied by a declaration that:

(1) Sets forth with particularity, the reasons for the requested enlargement or shortening of time;

(2) Discloses all previous time modifications in the case, whether by stipulation or Court order; and

(3) Describes the effect the requested time modification would have on the schedule for the case.

(b) Action by the Court. After receiving a stipulated request under this Rule, the Judge may grant, deny or modify the requested time change.

6-3. Motion to Change Time.

(a) Form and Content. A motion to enlarge or shorten time may be no more than 5 pages in length and must be accompanied by a proposed order and by a declaration that:

(1) Sets forth with particularity, the reasons for the requested enlargement or shortening of time;

(2) Describes the efforts the party has made to obtain a stipulation to the time change;

(3) Identifies the substantial harm or prejudice that would occur if the Court did not change the time; and

(4) If the motion is to shorten time for the Court to hear a motion:

(i) Describes the moving party's compliance with Civil L.R. 37-1(a), where applicable, and

(ii) Describes the nature of the underlying dispute that would be addressed in the motion and briefly summarizes the position each party had taken.

(5) Discloses all previous time modifications in the case, whether by stipulation or Court order;

(6) Describes the effect the requested time modification would have on the schedule for the case.

(b) Delivery of Motion to Other Parties. A party filing a motion to enlarge or shorten time must deliver a copy of the motion, proposed order and supporting declaration to all other parties on the day the motion is filed.

Cross Reference

See Civil L. R. 5-5(a)(2) *"Manner of Service,"* regarding time and methods for "delivery" of pleadings and papers.

(c) Opposition to Motion to Change Time. Unless otherwise ordered, a party who opposes a motion to enlarge or shorten time must file an opposition not to exceed 5 pages, accompanied by a declaration setting forth the basis for opposition, no later than 4 days after receiving the motion. The objecting party must deliver a copy of its opposition to all parties on the day the opposition is filed.

Cross Reference

See Civil L. R. 5-5(a)(2) *"Manner of Service,"* regarding time and methods for "delivery" of pleadings and papers.

(d) Action by the Court. After receiving a motion to enlarge or shorten time and any opposition, the Judge may grant, deny, modify the requested time change or schedule the matter for additional briefing or a hearing.

7. MOTION PRACTICE

7-1. Motions.

(a) Types of Motions. Any written request to the Court for an order must be presented by one of the following means:

(1) Duly noticed motion pursuant to Civil L.R. 7-2;

(2) A motion to enlarge or shorten time pursuant to Civil L.R. 6-1;

(3) When authorized, an *ex parte* motion pursuant to Civil L.R. 7-10;

(4) When applicable, a motion for administrative relief pursuant to Civil L.R. 7-11; or

(5) Stipulation of the affected parties pursuant to Civil L.R. 7-12.

(b) To Whom Motions Made. Motions must be directed to the Judge to whom the action is assigned, except as that Judge may otherwise order. In the Judge's discretion, or upon request by counsel and with the Judge's approval, a motion may be determined without oral argument or by telephone conference call.

(c) Unassigned Case or Judge Unavailable. A motion may be presented to the General Duty Judge or, if unavailable, to the Chief Judge or Acting Chief Judge when:

(1) The assigned Judge is unavailable as defined in Civil L.R. 1-5(p) and an emergency requires prompt action; or

(2) An order is necessary before an action can be filed.

7-2. Notice and Supporting Papers.

(a) Time. Except as otherwise ordered or permitted by the assigned Judge or these Local Rules, and except for motions made during the course of a trial or hearing, all motions must be filed, served and noticed in writing on the motion calendar of the assigned Judge for hearing not less than 35 days after service of the motion.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(b) Form. In one filed document not exceeding 25 pages in length, a motion must contain:

(1) On the first page in the space opposite the caption and below the case number, the noticed hearing date and time;

(2) In the first paragraph, notice of the motion including date and time of hearing;

(3) In the second paragraph, a concise statement of what relief or Court action the movant seeks; and

(4) In the succeeding paragraphs, the points and authorities in support of the motion -- in compliance with Civil L.R. 7-4(a).

(c) Proposed Order. Unless excused by the Judge who will hear the motion, each motion must be accompanied by a proposed order.

(d) Affidavits or Declarations. Each motion must be accompanied by affidavits or declarations pursuant to Civil L.R. 7-5.

Commentary

The time periods set forth in Civil L.R. 7-2 and 7-3 regarding notice, response and reply to motions are minimum time periods. For complex motions, parties are encouraged to stipulate to or seek a Court order establishing a longer notice period with correspondingly longer periods for response or reply. See Civil L.R. 1-4 and 1-5.

7-3. Opposition; Reply; Supplementary Material.

(a) Opposition. Any opposition to a motion must be served and filed not less than 21 days before the hearing date. The opposition may include a proposed order, affidavits or declarations, as well as a brief or memorandum under Civil L.R. 7-4. Pursuant to Civil L.R. 7-4(b), such briefs or memoranda may not exceed 25 pages of text.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(b) Statement of Nonopposition. If the party against whom the motion is directed does not oppose the motion, that party must file with the Court a Statement of Nonopposition within the time for filing and serving any opposition.

(c) Reply. Any reply to an opposition must be served and filed by the moving party not less than 14 days before the hearing date. The reply may include affidavits or declarations, as well as a supplemental brief or memorandum under Civil L.R. 7-4. Pursuant to Civil L.R. 7-4(b), the reply brief or memorandum may not exceed 15 pages of text.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(d) Supplementary Material. Before the noticed hearing date, counsel may bring to the Court's attention a relevant judicial opinion published after the date the opposition or reply was filed by serving and filing a Statement of Recent Decision, containing a citation to and providing a copy of the new opinion - without argument. Otherwise, once a reply is filed, no additional memoranda, papers or letters may be filed without prior Court approval.

7-4. Brief or Memorandum of Points and Authorities.

(a) Content. In addition to complying with the applicable provisions of Civil L.R. 3-4, a brief or memorandum of points and authorities filed in support, opposition or reply to a motion must contain:

(1) On the first page in the space opposite the caption and below the case number, the noticed hearing date and time;

(2) If in excess of 10 pages, a table of contents and a table of authorities;

(3) A statement of the issues to be decided;

(4) A succinct statement of the relevant facts; and

(5) Argument by the party, citing pertinent authorities.

(b) Length. Unless the Court expressly orders otherwise pursuant to a party's request made prior to the due date, briefs or memoranda filed with opposition papers may not exceed 25 pages of text and the reply brief or memorandum may not exceed 15 pages of text.

Cross Reference

See Civil L.R. 7-10(b) regarding request to exceed page limitations.

Commentary

Although Civil L.R. 7-4(b) limits briefs to 25 pages of text, counsel should not consider this a minimum as well as a maximum limit. Briefs with less than 25 pages of text may be excessive in length for the nature of the issues addressed.

7-5. Affidavit or Declaration.

(a) Affidavit or Declaration Required. Factual contentions made in support of or in opposition to any motion must be supported by an affidavit or declaration and by appropriate references to the record. Extracts from depositions, interrogatory answers, requests for admission and other evidentiary matters must be appropriately authenticated by an affidavit or declaration.

(b) Form. An affidavit or declarations may contain only facts, must conform as much as possible to the requirements of FRCivP 56(e), and must avoid conclusions and argument. Any statement made upon information or belief must specify the basis therefor. An affidavit or declaration not in compliance with this rule may be stricken in whole or in part.

7-6. Oral Testimony Concerning Motion.

No oral testimony will be received in connection with any motion, unless otherwise ordered by the assigned Judge.

7-7. Continuance of Hearing or Withdrawal of Motion.

(a) Before Opposition is Filed. Except for cases where the Court has issued a Temporary Restraining Order, a party who has filed a motion may file a notice continuing the originally noticed hearing date for that motion to a later date if:

(1) No opposition has been filed; and

(2) The notice of continuance is filed prior to the date on which the opposition is due pursuant to Civil L.R. 7-3(a).

(b) After Opposition is Filed. After an opposition to a motion has been filed, the noticed hearing date may be continued to a subsequent date as follows:

(1) When parties affected by the motion have not previously stipulated to continue the hearing date, unless the hearing date has been specially set by the Judge, the parties affected by the motion may stipulate in writing pursuant to Civil L.R. 6-1(a) to continue the hearing date; or

(2) Upon order of the assigned Judge:

(A) On the Court's own motion; or

(B) Pursuant to Civil L.R. 56-1 to permit a party time to respond to papers filed under FRCivP 56(c).

(c) Responsibility for Being Informed of Hearing Date. Counsel are responsible for being informed of the hearing date on a motion.

(d) Effect on Time for Filing Opposition or Reply. Unless the order for continuance specifies otherwise, the entry of an order continuing the hearing of a motion automatically extends the time for filing and serving opposing papers or reply papers to 21 and 14 days, respectively, preceding the new hearing date, unless the date for filing the papers has already passed prior to the date of the order for continuance.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(e) Withdrawal. Within 7 days after service of an opposition, the moving party may file and serve a notice of withdrawal of the motion. Upon the filing of a timely withdrawal, the motion will be taken off-calendar. Otherwise, the Court may proceed to decide the motion.

7-8. Motions for Sanctions -- Form and Timing.

Any motion for sanctions, regardless of the sources of authority invoked, must comply with the following:

(a) The motion must be separately filed and the date for hearing must be set in conformance with Civil L.R. 7-2;

(b) The form of the motion must comply with Civil L.R. 7-2;

(c) The motion must comply with any applicable FRCivP and must be made as soon as practicable after the filing party learns of the circumstances that it alleges make the motion appropriate; and

(d) Unless otherwise ordered by the Court, no motion for sanctions may be served and filed more than 14 days after entry of judgment by the District Court.

7-9. Motion for Reconsideration.

(a) Leave of Court Requirement. Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may make a motion before a Judge requesting that the Judge grant the party leave to file a motion for reconsideration of any interlocutory order made by that Judge on any ground set forth in Civil L.R. 7-9 (b). No party may notice a motion for reconsideration without first obtaining leave of Court to file the motion.

Cross Reference

See FRCivP 54(b) regarding discretion of Court to reconsider its orders

prior to entry of final judgment.

Commentary

This local rule does not apply to motions for reconsideration of a Magistrate Judge's order pursuant to 28 U.S.C. § 636(b)(1)(A). See Civil L.R. 72.

(b) Form and Content of Motion for Leave. A motion for leave to file a motion for reconsideration must be made in accordance with the requirements of Civil L.R. 7-9. The moving party must specifically show:

(1) That at the time of the motion for leave, a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought. The party also must show that in the exercise of reasonable diligence the party applying for reconsideration did not know such fact or law at the time of the interlocutory order; or

(2) The emergence of new material facts or a change of law occurring after the time of such order; or

(3) A manifest failure by the Court to consider material facts or dispositive legal arguments which were presented to the Court before such interlocutory order.

(c) Prohibition Against Repetition of Argument. No motion for leave to file a motion for reconsideration may repeat any oral or written argument made by the applying party in support of or in opposition to the interlocutory order which the party now seeks to have reconsidered. Any party who violates this restriction shall be subject to appropriate sanctions.

(d) Determination of Motion. Unless otherwise ordered by the assigned Judge, no response need be filed and no hearing will be held concerning a motion for leave to file a motion to reconsider. If the judge decides to order the filing of additional papers or that the matter warrants a hearing, the judge will fix an appropriate schedule.

7-10. *Ex Parte* Motions.

Unless otherwise ordered by the assigned Judge, a party may file an *ex parte* motion, that is, a motion filed without notice to opposing party, only if a statute, Federal Rule, local rule or Standing Order authorizes the filing of an *ex parte* motion in the circumstances and the party has complied with the applicable provisions allowing the party to approach the Court on an *ex parte* basis. The motion must include a citation to the statute, rule or order which permits the use of an *ex parte* motion to obtain the relief sought.

Cross Reference
See, e.g., Civil L.R. 65-1 "*Temporary Restraining Orders.*"

7-11. Motion for Administrative Relief.

The Court recognizes that during the course of case proceedings a party may require a Court order with respect to miscellaneous administrative matters, not otherwise governed by a federal statute, Federal or local rule or standing order of the assigned judge. These motions would include matters such as motions to exceed otherwise applicable page limitations or motions to file documents under seal, for example.

(a) Form and Content of Motions. A motion for an order concerning a miscellaneous administrative matter may not exceed 5 pages (not counting declarations and exhibits), must set forth specifically the action requested and the reasons supporting the motion and must be accompanied by a proposed order and by either a stipulation under Civil L.R. 7-12 or by a declaration that explains why a stipulation could not be obtained. The moving party must deliver the motion and all attachments to all other parties on the same day as the motion is filed.

Cross Reference
See Civil L. R. 5-5(a)(2) *"Manner of Service,"* regarding time and methods for delivery of pleadings and papers.

(b) Opposition to or Support for Motion for Administrative Relief. Any opposition to or support for a Motion for Administrative Relief may not exceed 5 pages (not counting declarations and exhibits), must set forth succinctly the reasons, must be accompanied by a proposed order, and must be filed no later than 4 days after the motion has been filed. The opposition or support and all attachments to it must be delivered to all other parties the same day it is filed.

Cross Reference
See Civil L. R. 5-5(a)(2) *"Manner of Service,"* regarding time and methods for delivery of pleadings and papers.

(c) Action by the Court. Unless otherwise ordered, a Motion for Administrative Relief is deemed submitted for immediate determination without hearing on the day after the opposition is due.

7-12. Stipulations.

Every stipulation requesting judicial action must be in writing signed by all affected parties or their counsel. A proposed form of order may be submitted with the stipulation and may consist of an endorsement on the stipulation of the words, "PURSUANT TO STIPULATION, IT IS SO ORDERED," with spaces designated for the date and the signature of the Judge.

7-13. Notice Regarding Submitted Matters.

Whenever any motion or other matter has been under submission for more than 120 days, a party, individually or jointly with another party, may file with the Court pursuant to Civil L.R. 5-1 a notice that the matter remains under submission. If judicial action is not taken, subsequent notices may be filed at the expiration of each 120-day period thereafter until a ruling is made.

Commentary

This rule does not preclude a party from filing an earlier notice if it is warranted by the nature of the matter under submission (e.g., motion for extraordinary relief).

7-14. Designation Not for Citation.

It is within the sole discretion of the issuing Judge to determine whether an order or opinion issued by that Judge shall not be citable. Any order or opinion which the issuing Judge determines shall not be citable shall bear in the caption before the title of the Court "NOT FOR CITATION."

Cross-Reference

See Civil L.R. 3-4(e) *"Prohibition of Citation to Uncertified Opinion or Order."*

10. FORM OF PAPERS

10-1. Amended Pleadings.

Any party filing or moving to file an amended pleading must reproduce the entire proposed pleading and may not incorporate any part of a prior pleading by reference.

11. ATTORNEYS

11-1. The Bar of this Court.

(a) Members of the Bar. Except as provided in Civil L.R. 11-2, 11-3 and 11-9, only members of the bar of this Court may practice in this Court. The bar of this Court consists of attorneys of good moral character who are active members in good standing of the bar of this Court prior to the effective date of these local rules and those attorneys who are admitted to membership after the effective date.

(b) Eligibility for Membership. After the effective date of these rules an applicant for admission to membership in the bar of this Court must be an attorney who is an active member in good standing of the State Bar of California.

(c) Procedure for Admission. Each applicant for admission must present to the Clerk a sworn petition for admission in the form prescribed by the Court. The petition must be accompanied by a certified copy of certificate of membership in the State Bar of California. Prior to admission to the bar of this Court, an attorney must certify:

(1) Knowledge of the contents of the Federal Rules of Civil and Criminal Procedure and Evidence, the Rules of the United States Court of Appeals for the Ninth Circuit and the Local Rules of this Court;

(2) Familiarity with the Alternative Dispute Resolution Programs of this Court; and

(3) Understanding and commitment to abide by the Standards of Professional Conduct of this Court set forth in Civil L.R. 11-4.

(d) Admission Fees. Each attorney admitted to practice before this Court under this Local Rule must pay to the Clerk the fee fixed by the Judicial Conference of the United States, together with an assessment in an amount to be set by the Court. The assessment will be placed in the Court Non-Appropriated Fund for library, educational and other appropriate uses.

(e) Admission. Upon signing the prescribed oath and paying the prescribed fees, the applicant may be admitted to the bar of the Court by the Clerk or a Judge, upon verification of the applicant's qualifications.

(f) Certificate of Good Standing. A member of the bar of this Court, who is in good standing, may obtain a Certificate of Good Standing by presenting a written request to the Clerk and paying the prescribed fee.

11-2. Attorneys for the United States.

Attorneys employed or retained by the United States government or any of its agencies may practice in this Court in all actions or proceedings within the scope of their employment or retention by the United States.

11-3. *Pro Hac Vice*.

(a) Application. An attorney who is not a member of the bar of this Court may apply to appear *pro hac vice* in a particular action in this district by filing a written application on oath certifying the following:

(1) That he or she is an active member in good standing of the bar of a United States Court or of the highest court of another State or the District of Columbia, specifying such bar;

(2) That he or she agrees to abide by the Standards of Professional Conduct set forth in Civil L.R. 11-4, and to become familiar with the Local Rules and Alternative Dispute Resolution Programs of this Court;

(3) That an attorney, identified by name, who is a member of the bar of this Court in good standing and who maintains an office within the State of California, is designated as co-counsel.

(b) Disqualification from *pro hac vice* appearance. Unless authorized by an Act of Congress or by an order of the assigned judge, an applicant is not eligible for permission to practice *pro hac vice* if the applicant: (i) resides in the State of California; or (ii) is regularly engaged in the practice of law in the State of California. This disqualification shall not be applicable if the *pro hac vice* applicant (i) has been a resident of California for less than one year; (ii) has registered with, and completed all required applications for admission to, the State Bar of California; and (iii) has officially registered to take or is awaiting his or her results from the California State Bar exam.

(c) Approval. The Clerk shall present the application to the assigned judge for approval. The assigned judge shall have discretion to accept or reject the application.

(d) Admission Fee. Each attorney requesting to be admitted to practice under Civil L.R. 11-3 must pay to the Clerk a fee in an amount to be set by the Court. The assessment will be placed in the Court's Non-Appropriated Fund for library, educational, and other appropriate uses. If the Judge rejects the application, the attorney, upon request, shall have the fee refunded.

(e) Appearances and Service on Local Co-Counsel. All papers filed by the attorney must indicate appearance *pro hac vice*. Service of papers on and communications with local co-counsel designated pursuant to Civil L.R. 11-3(a)(3) shall constitute notice to the party.

11-4. Standards of Professional Conduct.

(a) Duties and Responsibilities. Every member of the bar of this Court and any attorney permitted to practice in this Court under Civil L.R. 11 must:

(1) Be familiar and comply with the standards of professional conduct required of members of the State Bar of California;

(2) Comply with the Local Rules of this Court;

(3) Maintain respect due to courts of justice and judicial officers;

(4) Practice with the honesty, care, and decorum required for the fair and efficient administration of justice;

(5) Discharge his or her obligations to his or her client and the Court; and

(6) Assist those in need of counsel when requested by the Court.

Commentary

The California Standards of Professional Conduct are contained in the State Bar Act, the Rules of Professional Conduct of the State Bar of California, and decisions of any court applicable thereto.

(b) Prohibition Against Bias. The practice of law before this Court must be free from prejudice and bias. Treatment free of bias must be accorded all other attorneys, litigants, judicial officers, jurors and support personnel. Any violation of this policy should be brought to the attention of the Clerk or any Judge for action under Civ. L.R. 11-6.

(c) Prohibition against *Ex Parte* Communication. Except as otherwise provided by law, these Local Rules or otherwise ordered by the Court, attorneys or parties to any action must refrain from making telephone calls or writing letters or sending copies of communications between counsel to the assigned Judge or the Judge's law clerks or otherwise communicating with a Judge or the Judge's staff regarding a pending matter, without prior notice to opposing counsel.

Commentary

This rule is not intended to prohibit communications with a Courtroom Deputy Clerk regarding scheduling.

11-5. Withdrawal from Case.

(a) Order Permitting Withdrawal. Counsel may not withdraw from an action until relieved by order of Court after written notice has been given reasonably in advance to the client and to all other parties who have appeared in the case.

(b) Conditional Withdrawal. When withdrawal by an attorney from an action is not accompanied by simultaneous appearance of substitute counsel or agreement of the party to appear *pro se*, leave to withdraw may be subject to the condition that papers may continue to be served on counsel for forwarding purposes (or on the Clerk, if the Court so directs), unless and until the client appears by other counsel or *pro se*. When this condition is imposed, counsel must notify the party of this condition. Any filed consent by the party to counsel's withdrawal under these circumstances must include acknowledgment of this condition.

11-6. Discipline.

(a) General. In the event that a Judge has cause to believe that an attorney has engaged in unprofessional conduct, the Judge may do any or all of the following:

(1) Initiate proceedings for civil or criminal contempt under Title 18 of the United States Code and Rule 42 of the Federal Rules of Criminal Procedure;

(2) Impose other appropriate sanctions;

(3) Refer the matter to the appropriate disciplinary authority of the state or jurisdiction in which the attorney is licensed to practice;

(4) Refer the matter to the Court's Standing Committee on Professional Conduct; or

(5) Refer the matter to the Chief Judge for her or him to consider whether to issue an order to show cause under Civ. L.R. 11-7.

(b) "Attorney" Defined. For purposes of Civil L.R. 11-6, the term "attorney" may include law corporations and partnerships, when the alleged conduct occurs in the course and scope of employment by the corporation or partnership, and includes attorneys admitted to practice in this Court *pro hac vice* pursuant to Civil Local Rule 11-3.

(c) Standing Committee on Professional Conduct. The Court will appoint as Special Masters for Disciplinary Proceedings pending before the Court, a Standing Committee on Professional Conduct consisting of seven members of the bar and designate one of the members to serve as Chair of the Committee. The members of the Committee shall continue in office for a period of 4 years. Members shall serve staggered terms, with four of the first appointees serving for 2 years and three members serving for 4 years.

(d) Discipline Oversight Committee. The Chief Judge shall appoint three (3) or more Judges to a Discipline Oversight Committee which shall oversee the administration of this Local Rule.

11-7. Reciprocal Discipline and Discipline Following Felony Conviction.

(a) Notice. Any attorney admitted to practice in this Court who is convicted of a felony, suspended, disbarred or placed on disciplinary probation by any court, or who resigns from the bar of any court with an investigation into allegations of unprofessional conduct pending, must give notice to the Clerk in writing within 14 days of such event.

(b) Order to Show Cause. Unless referred to the Standing Committee on Professional Conduct, matters subject to reciprocal discipline on the grounds listed in paragraph (a) above shall be handled as follows:

> **(1)** In such matters, the Chief Judge shall issue an order to the attorney that he or she show cause why the attorney should not be disbarred, suspended, placed on disciplinary probation or otherwise disciplined.
>
> **(2)** If no response is received to an order to show cause within 28 days of mailing, the Chief Judge shall make an independent review of the record of the other proceedings to determine that there was no deprivation of due process, sufficient proof of misconduct, and that no grave injustice would result from the imposition of discipline. The Chief Judge shall issue an appropriate order.
>
> **(3)** An attorney who wishes to contest reciprocal discipline must file with the Court a timely response to the order to show cause. The Chief Judge may then act on the matter, assign it to another judge or refer it to the Standing Committee on Professional Conduct for recommendation.

(4) An attorney disbarred, suspended or placed on disciplinary probation under the reciprocal discipline provisions of this rule may seek reinstatement upon completion of the period of suspension, disbarment or disciplinary probation by filing a petition with the Clerk, together with proof of any reinstatement by the reciprocal jurisdiction. An attorney disbarred by reason of a felony conviction may not petition for reinstatement until at least one year after entry of the disbarment order.

(c) Matters Referred to the Standing Committee. Unless otherwise directed by the Court, the Standing Committee on Professional Conduct shall investigate any charge or information, referred in writing by a Judge of this Court, that any member of the bar of this Court or any attorney permitted to practice in this Court has engaged in unprofessional conduct in connection with an action in this district, in accordance with the following procedure:

(1) Each matter referred shall be assigned an appropriate number by the Clerk, who shall maintain a file under seal. At the written request of the Standing Committee, the Chief Judge (or in a matter referred by the Chief Judge, the General Duty Judge) may direct the issuance of subpoenas and subpoenas *duces tecum*.

(2) Investigations shall be conducted informally as the Standing Committee deems advisable. Investigations shall be confidential unless the Discipline Oversight Committee, upon application by the Standing Committee on Professional Conduct or the attorney, concludes that there is a compelling reason to make the matter public. The Standing Committee may finally resolve any referred matter informally, short of formal discipline, as it deems appropriate, and must provide a report of its investigation and any resolution to the referring judge. Records shall be maintained as directed by the Discipline Oversight Committee.

(3) All final actions of the Standing Committee require a majority vote. However, the Standing Committee may organize itself and conduct its affairs by subcommittees of one or more members as it deems advisable. If a majority of the members determine that public reprimand, suspension, disbarment, or other formal discipline is warranted, and the respondent attorney does not consent, the Standing Committee shall institute a disciplinary proceeding by filing with the Clerk a sealed petition that identifies specifically the alleged misconduct. Upon the filing of the petition, the proceeding shall be assigned to a Judge, other than the referring Judge, in the same manner as any other civil action or proceeding. Unless otherwise directed by the assigned judge, the proceeding shall then be presented by a member of the Standing Committee. The presenting attorney will be paid out-of-pocket expenses from court funds.

(4) The Judge to whom the proceeding is assigned shall issue an order to show cause setting a date for hearing, addressed to the respondent attorney, requiring the attorney to appear and show cause why he or she should not be disciplined as prayed for in the petition. The order shall direct that a copy thereof, together with a copy of the petition, be served on the respondent in a manner permitted by FRCivP 5(b) not less than 35 days in advance of the date specified for hearing. Any response must be filed at least 21 days in advance of the date specified for hearing. Thereafter, the matter shall proceed in accordance with the Federal Rules of Civil Procedure and this Court's Civil Rules as to discovery, motion practice, pretrial and trial as in other civil actions. Written findings of fact and an order based thereon shall be filed by the Judge when dismissing the proceeding or when imposing discipline.

(5) Except with respect to reciprocal discipline pursuant to subparagraph (a) of this Local Rule, any order of disbarment or suspension from practice for more than one year shall be reviewable by a panel of three Judges of this Court designated by the Chief Judge, upon petition filed by the respondent within 14 days of filing of the order. Discipline is not stayed during such a review, absent contrary order from the panel or the ordering judge. Review by any such panel shall be *de novo* as to matters of law and under the substantial evidence standard as to matters of fact. This provision does not apply to revocation of permission to practice *pro hac vice*.

(6) The Clerk shall give prompt notice of any order of discipline imposed pursuant to this Local Rule to the disciplinary body of the court(s) before which the respondent attorney has been admitted to practice.

(d) Costs. Any discipline or other resolution imposed under this Local Rule may include an order that the respondent attorney pay costs of prosecution, including out-of-pocket expenses of the presenting attorney.

Cross Reference

See FRCivP 11(c), 16(f), 37.

11-8. Sanctions for Unauthorized Practice.

A person who exercises, or pretends to be entitled to exercise, any of the privileges of membership in the bar of this Court, when that person is not entitled to avail themselves of such membership privileges, shall be subject to sanctions or other punishment, including a finding of contempt.

11-9. Student Practice.

(a) Permission to Appear. With the approval of the assigned Judge, a certified law student who complies with these Local Rules and acts under the supervision of a member of the bar of this Court may engage in the permitted activities set forth in this Local Rule.

(b) Permitted Activities. With respect to a matter pending before this Court, a certified law student may:

(1) Negotiate for and on behalf of the client or appear at Alternative Dispute Resolution (ADR) proceedings, provided that the activity is conducted under the general supervision of a supervising attorney;

(2) Appear on behalf of a client in the trial of a misdemeanor or petty offense, provided the appearance is under the general supervision of a supervising attorney who is immediately available to attend the proceeding if the Judge decides to require the presence of the supervising attorney and, if the client is a criminal defendant, the client has filed a consent with the Court; and

(3) Appear on behalf of a client in any other proceeding or public trial, provided the appearance is under the direct and immediate supervision of a supervising attorney, who is present during the proceedings.

(c) Requirements for Eligibility. To be eligible to engage in the permitted activities, a law student must submit to the Clerk:

(1) An application for certification on a form established for that purpose by the Court. The Clerk is authorized to issue a certificate of eligibility;

(2) A copy of a Notice of Student Certification or Recertification from the State Bar of California, or a certificate from the registrar or dean of a law school accredited by the American Bar Association or the State Bar of California that the law student has completed at least one-third of the graduation requirements and is continuing study at the law school, (or, if a recent graduate of the law school, that the applicant has registered to take or is awaiting results of the California State Bar Examination). The certification may be withdrawn at any time by the registrar or dean by providing notice to that effect to the Court; and

(3) Certification from a member of the bar of this Court that he or she will serve as a supervising attorney for the law student. The certification may be withdrawn at any time by a supervising attorney by providing notice to that effect to the Court.

(d) Requirements of Supervising Attorney. A supervising attorney must:

(1) Be admitted or otherwise permitted to practice before this Court;

(2) Sign all documents to be filed by the student with the Court;

(3) Assume professional responsibility for the student's work in matters before the Court; and

(4) Assist and counsel the student in the preparation of the student's work in matters before the Court.

(e) Termination of Privilege. The privilege of a law student to appear before this Court under this rule may be terminated by the Court at any time in the discretion of the Court, without the necessity to show cause.

16. CASE MANAGEMENT AND PRETRIAL CONFERENCES

16-1. Definitions.

"Scheduling," "discovery," or "status" conferences under FRCivP 16 and 26 shall be designated as "case management conferences" in this Court. All statements, proposed orders, or other documents prepared in connection with such conferences must be referred to as such.

16-2. Order Setting Initial Case Management Conference.

(a) Issuance and Service of Order. Except in categories of cases excluded under the Federal Rules of Civil Procedure, or these Local Rules or orders of this Court, when an action is filed the Court shall issue to the filing party an Order Setting Initial Case Management Conference and ADR Deadlines. The Order shall set the date for the Initial Case Management Conference -- which shall be on the first date available on the assigned Judge's calendar that is not less than 90 days after the action was filed, and shall specify the deadline for filing the ADR Certification required by Civil L.R. 16-8(b) and either a Stipulation Selecting an ADR Process or a Notice of Need for ADR Phone Conference as required by Civil L.R. 16-8 (c) and ADR L.R. 3-5(c). A copy of this Order must be served by the plaintiff on each defendant, along with the supplementary materials specified by Civil L.R. 4-2.

(b) Case Management Schedule in Removed Cases. When a case is removed from a state court to this Court, upon the filing of the notice of removal the Court shall issue to the removing party an Order Setting Initial Case Management Conference, as described in subsection (a), above. The removing party must serve the other parties in the case with a copy of the Order and the supplementary materials specified in Civil L.R. 4-2. Unless ordered otherwise by the Court, the filing of a motion for remand does not relieve the parties of any obligations under this rule.

(c) Case Management Schedule in Transferred Cases. When a civil action is transferred to this district, the Court shall issue to the plaintiff an Order Setting Initial Case Management Conference, as described in subsection (a), above. The plaintiff must serve the other parties in the case with a copy of the Order and the pertinent supplementary materials specified in Civil L.R. 4-2.

(d) Relief from Case Management Schedule. By serving and filing a motion with the assigned judge pursuant to Civil L.R. 7, a party, including a party added later in the case, may seek relief from an obligation imposed by FRCivP 16 or 26 or the Order Setting Initial Case Management Conference. The motion must:

(1) Describe the circumstances which support the request;

(2) Affirm that counsel for the moving party has conferred with all other counsel in an effort to reach agreement about the matter and, for each other party, report whether that party supports or opposes the request for relief;

(3) Be accompanied by a proposed revised case management schedule; and

(4) If applicable, indicate any changes required in the ADR process or schedule in the case.

(e) Limitation on Stipulations. Any stipulation that would vary the date of a Case Management Conference shall have no effect unless approved by the assigned Judge before the date set for the conference. Any stipulation must comply with Civil L.R. 7-12.

16-3. Lead Trial Counsel Required to Confer.

Unless otherwise ordered, the conferring and planning that is mandated by FRCivP 26(f) and by ADR Local Rule 3-5 must be done by lead trial counsel for each party.

16-4. Procedure in Bankruptcy Appeals.

Appeals from the United States Bankruptcy Court to the United States District Court are governed by the Federal Rules of Bankruptcy Procedure and the Bankruptcy Local Rules of this district.

Cross Reference

See Fed. R. Bankr. P. 8001 through 8020 and B.L.R. 8001-1 through 8011-1.

16-5. Procedure in Actions for Review on an Administrative Record.

In actions for District Court review on an administrative record, the defendant must serve and file an answer, together with a certified copy of the transcript of the administrative record, within 90 days of receipt of service of the summons and complaint. Within 28 days of receipt of defendant's answer, plaintiff must file a motion for summary judgment pursuant to Civil L.R. 7-2 and FRCivP 56. Defendant must serve and file any opposition or counter-motion within 28 days of service of plaintiff's motion. Plaintiff may serve and file a reply within 14 days after service of defendant's opposition or counter-motion. Unless the Court orders otherwise, upon the conclusion of this briefing schedule, the matter will be deemed submitted for decision by the District Court without oral argument.

16-6. Procedure in U.S. Debt Collection Cases.

These cases shall proceed as follows:

(a) Identification. The first page of the complaint must identify the action by using the words "Debt Collection Case;"

(b) Assignment. Upon filing the complaint, the matter will be assigned to a Magistrate Judge for all pre-trial proceedings; and

(c) Collection Proceedings. If the United States files an application under the Federal Debt Collection Procedures Act, either pre-judgment or post-judgment, such matter will be assigned to a Magistrate Judge.

16-7. Procedure in Other Exempt Cases.

Unless otherwise provided in these local rules, in categories of cases that are exempted by FRCivP 26(a)(1)(B) from the initial disclosure requirements of FRCivP 26(a)(1), promptly after the commencement of the action the assigned judge will schedule a Case Management Conference or issue a case management order without such conference. Discovery shall proceed in such cases only at the time, and to the extent, authorized by the Judge in the case management order.

16-8. Alternative Dispute Resolution (ADR) in the Northern District.

(a) District Policy Regarding ADR. It is the policy of this Court to assist parties involved in civil litigation to resolve their disputes in a just, timely and cost-effective manner. The Court has created and makes available its own Alternative Dispute Resolution (ADR) programs for which it has promulgated local rules. The Court also encourages civil litigants to consider use of ADR programs operated by private entities. At any time after an action has been filed, the Court on its own initiative or at the request of one or more parties may refer the case to one of the Court's ADR programs, or to a judicially hosted settlement conference.

Cross Reference

See ADR L.R. 1-2 "*Purpose and Scope*;" ADR L.R. 2-3 "*Referral to ADR Program*." The Court's ADR processes and procedures are described on the Court's ADR Internet site: www.adr.cand.uscourts.gov .

(b) ADR Certification. In cases assigned to the ADR Multi-Option Program, unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference and ADR Deadlines, counsel and client must sign, serve and file an ADR Certification. The certification must be made on a form established for this purpose by the Court and in conformity with the instructions approved by the Court. Separate Certifications may be filed by each party. If the client is a government or governmental agency, the certificate must be signed by a person who meets the requirements of Civil L.R. 3-9(c). Counsel and client must certify that both have:

(1) Read the handbook entitled "*Dispute Resolution Procedures in the Northern District of California*"on the ADR Internet site, www.adr.cand.uscourts.gov;

(2) Discussed the available dispute resolution options provided by the Court and private entities; and

(3) Considered whether their case might benefit from any of the available dispute resolution options.

Cross Reference

See ADR L.R. 3-5 "*Selecting an ADR Process*."

Commentary

Certification forms are available on the Court's ADR Internet site www.adr.cand.uscourts.gov and the ECF Website www.ecf.cand.uscourts.gov. Limited printed copies of the handbook entitled "Dispute Resolution Procedures in the Northen District of California" are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

(c) Stipulation to ADR Process or Notice of Need for ADR Telephone Conference. In cases assigned to the ADR Multi-Option Program, unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference and ADR Deadlines, counsel must file, in addition to the ADR Certification, either a "Stipulation and (Proposed) Order Selecting ADR Process" or a "Notice of Need for ADR Phone Conference" on a form established by the Court.

(1) Stipulation. If the parties agree to participate in a Court-sponsored non-binding arbitration, ENE or mediation, or in private ADR, they must file a form Stipulation and Proposed Order selecting an ADR process.

(2) Notice of Need for ADR Phone Conference. If the parties are unable to agree on an ADR process, or if the parties believe that an early settlement conference with a Magistrate Judge is appreciably more likely to meet their needs than any other form of ADR, they must file a Notice of Need for ADR Phone Conference.

Cross Reference

See ADR L.R. 3-5 "*Selecting an ADR Process*" and ADR L.R. 3-5(d) *"Selection Through ADR Phone Conference."*

Commentary

Because of the many other duties assigned to Magistrate Judges, the Court refers only a limited number of cases to Magistrate Judges for early settlement conferences. Forms for "Stipulation to an ADR Process" and "Notice of Need for ADR Telephone Conference" are available on the Court's ADR Internet site www.adr.cand.uscourts.gov and the ECF Internet site www.ecf.cand.uscourts.gov and in the Appendix to these Local Rules. Limited printed copies are available from the Clerk's Office for parties in cases not subject to the Court's Electronic Case Filing program (ECF) under General Order 45.

16-9. Case Management Statement and Proposed Order.

(a) Joint or Separate Case Management Statement. Unless otherwise ordered, no later than the date specified in FRCivP 26(f), counsel must file a Joint Case Management Statement addressing all of the topics set forth in the Standing Order for All Judges of the Northern District of California – Contents of Joint Case Management Statement, which can be found on the Court's website located at http://www.cand.uscourts.gov. If one or more of the parties is not represented by counsel, the parties may file separate case management statements. If a party is unable, despite reasonable efforts, to obtain the cooperation of another party in the preparation of a joint statement, the complying party may file a separate case management statement, accompanied by a declaration describing the conduct of the uncooperative party which prevented the preparation of a joint statement. Separate statements must also address all of the topics set forth in the Standing Order referenced above.

(b) Case Management Statement in Class Action. Any party seeking to maintain a case as a class action must include in the Case Management Statement required by Civil L.R. 16-9(a) the following additional information:

(1) The specific paragraphs of FRCivP 23 under which the action is maintainable as a class action;

(2) A description of the class or classes in whose behalf the action is brought;

(3) Facts showing that the party is entitled to maintain the action under FRCivP 23(a) and (b); and

(4) A proposed date for the Court to consider whether the case can be maintained as a class action.

16-10. Case Management Conference.

(a) Initial Case Management Conference. Unless otherwise ordered, no later than the date specified in the Order Setting Initial Case Management Conference, the Court will conduct an initial Case Management Conference. The assigned District Judge may designate a Magistrate Judge to conduct the initial Case Management Conference and, subject to 28 U.S.C. § 636, other pretrial proceedings in the case. Unless excused by the Judge, lead trial counsel for each party must attend the initial Case Management Conference. Requests to participate in the conference by telephone must be filed and served at least 7 days before the conference or in accordance with the Standing Orders of the assigned Judge.

(b) Case Management Orders. After a Case Management Conference, the Judge will enter a Case Management Order or sign the Joint Case Management Statement and Proposed Order submitted by the parties. This order will comply with FRCivP 16(b) and will identify the principal issues in the case, establish deadlines for joining parties and amending pleadings, identify and set the date for filing any motions that should be considered early in the pretrial period, establish a disclosure and discovery plan, set appropriate limits on discovery and refer the case to ADR unless such a referral would be inappropriate. In addition, in the initial Case Management Order or in any subsequent case management order, the Court may establish deadlines for:

(1) Commencement and completion of any ADR proceedings;

(2) Disclosure of proposed expert or other opinion witnesses pursuant to FRCivP 26(a)(2), as well as supplementation of such disclosures;

(3) Conclusion of pretrial discovery and disclosure;

(4) Hearing pretrial motions;

(5) Counsel to meet and confer to prepare joint final pretrial conference statement and proposed order and coordinated submission of trial exhibits and other material;

(6) Filing joint final pretrial conference statement and proposed order;

(7) Lodging exhibits and other trial material, including copies of all exhibits to be offered and all schedules, summaries, diagrams and charts to be used at the trial other than for impeachment or rebuttal. Each proposed exhibit must be premarked for identification. Upon request, a party must make the original or the underlying documents of any exhibit available for inspection and copying;

(8) Serving and filing briefs on all significant disputed issues of law, including procedural and evidentiary issues;

(9) In jury cases, serving and filing requested voir dire questions, jury instructions, and forms of verdict; or in court cases, serving and filing proposed findings of fact and conclusions of law;

(10) Serving and filing statements designating excerpts from depositions (specifying the witness and page and line references), from interrogatory answers and from responses to requests for admission to be offered at the trial other than for impeachment or rebuttal;

(11) A date by which parties objecting to receipt into evidence of any proposed testimony or exhibit must advise and confer with the opposing party with respect to resolving such objection;

(12) A final pretrial conference and any necessary Court hearing to consider unresolved objections to proposed testimony or exhibits;

(13) A trial date and schedule;

(14) Determination of whether the case will be maintained as a class action; and

(15) Any other activities appropriate in the management of the case, including use of procedures set forth in the Manual for Complex Litigation.

(c) Subsequent Case Management Conferences. Pursuant to FRCivP 16, the assigned Judge or Magistrate Judge may, *sua sponte* or in response to a stipulated request or motion, schedule subsequent case management conferences during the pendency of an action. Each party must be represented at such subsequent case management conferences by counsel having authority with respect to matters under consideration.

(d) Subsequent Case Management Statements. Unless otherwise ordered, no fewer than 7 days before any subsequent case management conference, the parties must file a Joint Case Management Statement, reporting progress or changes since the last statement was filed and making proposals for the remainder of the case development process. Such statements must report the parties' views about whether using some form of ADR would be appropriate.

Commentary

See Appendix B to these Local Rules for sample form. See also "Forms" link on the Court's Internet site, located at http://www.cand.uscourts.gov

23. CLASS ACTIONS

23-1. Private Securities Actions.

(a) Filing and Serving Required Notices. Not later than 21 days after filing the complaint in any action governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), the party filing that complaint and seeking to serve as lead plaintiff must serve and file a copy of any notice required by the Act.

Cross Reference

See Civil L.R. 3-7 *"Civil Cover Sheet and Certification in Private Securities Actions."*

(b) Motion to Serve as Lead Plaintiff. Not later than 60 days after publication of the notices referred to in Civil L.R. 23-1(a), any party seeking to serve as lead plaintiff must serve and file a motion to do so. The motion must set forth whether the party claims entitlement to the presumption set forth in section 27(a)(3)(B)(iii)(I) of the Securities Act or section 21D(a)(3)(B)(iii)(I) of the Securities Exchange Act or that the presumption is rebutted and the reasons therefor.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

Commentary

A "*Model Stipulation and Proposed Consolidation Order for Securities Fraud Class Actions*" is available from the Clerk in civil actions containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), and is part of the materials provided to the filing party for service on all parties in the action pursuant to Civil L.R. 4-2. See also "Forms" link on the Court's Internet site, located at http://www.cand.uscourts.gov

23-2. Electronic Posting of Certain Documents Filed in Private Securities Actions.

(a) Electronic Posting. All postable documents, as defined in subsection (b) of this rule, required to be filed pursuant to Civil L.R. 5-1 in any private civil action containing a claim governed by the Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), must be timely posted at a Designated Internet Site. The party or other person filing such document is responsible for timely posting.

(b) Postable Documents. For purposes of this Rule, "postable documents" means:

(1) Any pleading specified in FRCivP 7(a);

(2) Any briefs, declarations or affidavits filed pursuant to FRCivP 12, 41 or 56;

(3) Any briefs, declarations or affidavits relating to certification of a class pursuant to FRCivP 23;

(4) Any briefs, declarations or affidavits relating to designation of a lead plaintiff pursuant to 15 U.S.C. §§ 77z-1(a)(3) or 78u-4(a)(3);

(5) Any report, statement, declaration or affidavit of an expert witness designated to testify, whether filed pursuant to FRCivP 26(a)(2)(B), or otherwise;

(6) Any pretrial conference statement pursuant to Civil L.R. 16-10, pretrial briefs or motions in limine;

(7) Any filing concerning approval of a settlement of the action; and

(8) Any filing concerning any request for attorney fees or costs.

(9) Provided however, that no person shall be required by this Rule to post any:

(A) Document which is filed under seal with the written consent of the Court, whether pursuant to a pre-existing written confidentiality order, or otherwise; or

(B) Exhibits, appendixes or other attachments to documents otherwise required to be posted; or

(C) Briefs, declarations or affidavits which are not available in electronic form in the possession, custody or control of the person filing the document, or such person's counsel, agents, consultants or employees.

(c) Timely Posting. A postable document shall be deemed timely posted at a Designated Internet Site in accordance with subsection (a) of this rule if, on the day the document is filed with this Court:

(1) An electronic form of the filing, prepared in any commonly used word processing format, is forwarded to a Designated Internet Site by electronic transmission, e-mail, physical delivery of a diskette, or any other means acceptable to that Designated Internet Site, provided that such electronic delivery occurs by means reasonably calculated to result in delivery by the third day following the filing; and

(2) The certificate of service required by Civil L.R. 5-6 states that service in compliance with this rule has been accomplished to a Designated Internet Site that is identified by its physical and electronic addresses.

(d) Designated Internet Site. "Designated Internet Site" for purposes of this rule means an Internet site that:

(1) Is accessible at no cost to all members of the public who are otherwise able to access the Internet through commonly used web browsers;

(2) Charges no fee to any party, intervenor, amicus or other person subject to the provisions of this rule;

(3) Places no restrictions on any person's ability to copy or to download, free of charge, any materials posted on the site pursuant to the requirements of this rule;

(4) Maintains and responsibly operates a notification feature whereby any member of the public can request to receive e-mail notification, at no charge, of any posting of materials to the Designated Internet Site;

(5) Undertakes to post on its site within two days of receipt of the electronic copy all filings forwarded to it;

(6) Undertakes to provide e-mail notification within one day of receipt of the electronic copy to all other Designated Internet Sites informing them of the posting of any materials related to securities class action litigation;

(7) Maintains and publicizes a physical address to which the United States Postal Service or other commonly used delivery services can make physical delivery of documents, and/or diskettes, an Internet address in the form of an operational Uniform Resource Location ("URL"), and an e-mail address to which persons subject to paragraph (a) of this rule can transmit electronic copies of documents subject to the posting requirement of this rule;

(8) Undertakes to disclose prominently the URLs, physical addresses, and facsimile numbers of all other Designated Internet Sites known to it; and

(9) Submits to the Secretary of the Securities and Exchange Commission (the "Secretary") a statement signed by a member of the bar that: identifies the Designated Internet Site through its URL; provides the name, address, telephone number, facsimile number and e-mail address of one or more persons responsible for operation of the site; and attests that the site satisfies the requirements of the rule and that it will promptly notify the Secretary should it cease to be a Designated Internet Site.

(e) Suspension of Posting Requirements. Compliance with this rule is not required for any document filed at any time during which no Designated Internet Site is operational.

Cross Reference

See Civil L.R. 3-7 *"Civil Cover Sheet and Certification in Private Securities Actions."*

Commentary

The Private Securities Litigation Reform Act of 1995, Pub. L. No. 104-67, 109 Stat. 737 (1995), (the "Reform Act") contains several provisions designed to disseminate broadly to investors information relating to the initiation and settlement of class action securities fraud litigation in the federal courts. See, e.g., 15 U.S.C. §§ 77z-1(a)(3)(A), 77z-1(a)(7), 78u-4(a)(3)(A), 78u-4(a)(7). The legislative history of that Act makes clear that Congress intended that litigants also make use of "electronic or computer services" to notify class members. H.R. Conf. Rep. 369, 104th Cong., 1st Sess. 34 (1995).

Notification to class members traditionally involves a combination of mailings and newspaper advertisements that are expensive, employ small type, convey little substantive information and that may be difficult for members of the class to locate. The rapid growth of Internet technology provides a valuable means whereby extensive amounts of information can be communicated at low cost to all actual or potential members of a class, as well as to other members of the public. Consistent with Congressional intent to promote the use of "electronic or computer services", this rule seeks to employ Internet technology to disseminate broadly information related to class action securities fraud litigation.

Civil L.R. 23-2 is designed to capitalize on the potentially substantial benefits of the Internet for class members, counsel, and the Court while imposing *de minimis* costs. Compliance is simple and inexpensive: it is accomplished by sending an e-mail copy or a diskette of a filing that already exists on a wordprocessor to a Designated Internet Site which charges no fee for the services it renders. The rule specifically does not require that counsel create electronic versions of filings, attachments, exhibits, or other materials that do not already exist in readily accessible machine-readable form. Posting to a Designated Internet Site is not a substitute for other applicable filing requirements.

The benefits of Internet access to these documents are several. Clients will be able easily to monitor developments in litigation pursued on their behalf. Courts and counsel will be able to observe litigation developments over a broader span of disputes and thereby become better informed with regard to emerging issues in this complex area of the law. With addition of full text search engines to the data contained in Designated Internet Sites, courts, litigants, and class members alike will be able to search efficiently the most significant filings in class action securities fraud litigation for issues and facts relevant to their analyses. Search tools now limited to the analysis of judicial decisions will thus become applicable to the record in a case itself.

Links to Designated Internet Sites may be found at the following Internet address: http://securities.stanford.edu

The Court recognizes the novel nature of this posting requirement. The Court therefore proposes to adopt the rule on a temporary basis and will regularly review its operation and any difficulties that may arise.

26. GENERAL PROVISIONS GOVERNING DISCOVERY

26-1. Custodian of Discovery Documents.

The party propounding interrogatories, requests for production of documents, or requests for admission must retain the original of the discovery request and the original response. That party shall be the custodian of these materials. FRCivP 30(f) identifies the custodian of the original transcript or recording of a deposition.

Commentary

Counsel should consider stipulating to sharing diskettes or other computer-readable copies of discovery requests, such as interrogatories and requests for production of documents, as well as responses to such requests, to save costs and to facilitate expeditious pretrial discovery.

26-2. Discovery Cut-Off; Deadline to File Motions to Compel.

Unless otherwise ordered, as used in any order of this Court or in these Local Rules, a "discovery cut-off" is the date by which all responses to written discovery are due and by which all depositions must be concluded.

Where the Court has set a single discovery cut-off for both fact and expert discovery, no motions to compel discovery may be filed more than 7 days after the discovery cut-off.

Where the Court has set separate deadlines for fact and expert discovery, no motions to compel fact discovery may be filed more than 7 days after the fact discovery cut-off, and no motions to compel expert discovery may be filed more than 7 days after the expert discovery cut-off.

Discovery requests that call for responses or depositions after the applicable discovery cut-off are not enforceable, except by order of the Court for good cause shown.

Cross Reference

See Civil L.R. 37 *"Compelling Discovery or Disclosure."*

Commentary

Counsel should initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this local rule.

30. DEPOSITIONS

30-1. Required Consultation Regarding Scheduling.

For the convenience of witnesses, counsel and parties, before noticing a deposition of a party or witness affiliated with a party, the noticing party must confer about the scheduling of the deposition with opposing counsel or, if the party is pro se, the party. A party noticing a deposition of a witness who is not a party or affiliated with a party must also meet and confer about scheduling, but may do so after serving the nonparty witness with a subpoena.

30-2. Numbering of Deposition Pages and Exhibits.

(a) Sequential Numbering of Pages. The pages of the deposition of a single witness, even if taken at different times, must be numbered sequentially.

(b) Sequential Numbering of Exhibits. Documents identified as exhibits during the course of depositions and at trial must be numbered and organized as follows:

(1) At the outset of the case, counsel must meet and confer regarding the sequential numbering system that will be used for exhibits throughout the litigation, including trial.

(2) If the pages of an exhibit are not numbered internally and it is necessary to identify pages of an exhibit, then each page must receive a page number designation preceded by the exhibit number (e.g., Exhibit 100-2, 100-3, 100-4).

(3) To the extent practicable, any exhibit which is an exact duplicate of an exhibit previously numbered must bear the same exhibit number regardless of which party is using the exhibit. Any version of any exhibit which is not an exact duplicate must be marked and treated as a different exhibit, bearing a different exhibit number.

(4) In addition to exhibit numbers, documents may bear other numbers or letters used by the parties for internal control purposes.

33. INTERROGATORIES

33-1. Form of Answers and Objections.

Answers and objections to interrogatories must set forth each question in full before each answer or objection.

33-2. Demands that a Party Set Forth the Basis for a Denial of a Requested Admission.

A demand that a party set forth the basis for a denial of an admission requested under FRCivP 36 will be treated as a separate discovery request (an interrogatory) and is allowable only to the extent that a party is entitled to propound additional interrogatories.

Cross Reference

To the same effect, see Civil L.R. 36-2.

Commentary

Under FRCivP 36, a party is not required to set forth the basis for a unqualified denial.

33-3. Motions for Leave to Propound More Interrogatories Than Permitted by FRCivP 33.

A motion for leave to propound more interrogatories than permitted by FRCivP 33 must be accompanied by a memorandum which sets forth each proposed additional interrogatory and explains in detail why it is necessary to propound the additional questions.

34. PRODUCTION OF DOCUMENTS AND THINGS

34-1. Form of Responses to Requests for Production.

A response to a request for production or inspection made pursuant to FRCivP 34(a) must set forth each request in full before each response or objection.

36. REQUESTS FOR ADMISSION

36-1. Form of Responses to Requests for Admission.

Responses to requests for admission must set forth each request in full before each response or objection.

36-2. Demands that a Party Set Forth the Basis for a Denial of a Requested Admission.

A demand that a party set forth the basis for a denial of a requested admission will be treated as a separate discovery request (an interrogatory) and is allowable only to the extent that a party is entitled to propound additional interrogatories.

Cross Reference

To the same effect, see Civil L.R. 33-2.

Commentary

Under FRCivP 36, a party is not required to set forth the basis for a unqualified denial.

37. MOTIONS TO COMPEL DISCLOSURE OR DISCOVERY OR FOR SANCTIONS

37-1. Procedures for Resolving Disputes.

(a) Conference Between Counsel Required. The Court will not entertain a request or a motion to resolve a disclosure or discovery dispute unless, pursuant to FRCivP 37, counsel have previously conferred for the purpose of attempting to resolve all disputed issues. If counsel for the moving party seeks to arrange such a conference and opposing counsel refuses or fails to confer, the Judge may impose an appropriate sanction, which may include an order requiring payment of all reasonable expenses, including attorney's fees, caused by the refusal or failure to confer.

(b) Requests for Intervention During a Discovery Event. If a dispute arises during a discovery event the parties must attempt to resolve the matter without judicial intervention by conferring in good faith. If good faith negotiations between the parties fail to resolve the matter, and if disposition of the dispute during the discovery event likely would result in substantial savings of expense or time, counsel or a party may contact the chambers of the assigned District Judge or Magistrate Judge to ask if the Judge is available to address the problem through a telephone conference during the discovery event.

37-2. Form of Motions to Compel.

In addition to complying with applicable provisions of Civil L.R. 7, a motion to compel further responses to discovery requests must set forth each request in full, followed immediately by the objections and/or responses thereto. For each such request, the moving papers must detail the basis for the party's contention that it is entitled to the requested discovery and must show how the proportionality and other requirements of FRCivP 26(b)(2) are satisfied.

37-3. Motions for Sanctions under FRCivP 37.

When, in connection with a dispute about disclosure or discovery, a party moves for an award of attorney fees or other form of sanction under FRCivP 37, the motion must:

(a) Comply with Civil L.R. 7-8 and Civil L.R. 7-2; and

(b) Be accompanied by competent declarations which:

(1) Set forth the facts and circumstances that support the motion;

(2) Describe in detail the efforts made by the moving party to secure compliance without intervention by the Court; and

(3) If attorney fees or other costs or expenses are requested, itemize with particularity the otherwise unnecessary expenses, including attorney fees, directly caused by the alleged violation or breach, and set forth an appropriate justification for any attorney-fee hourly rate claimed.

40. TRIAL

40-1. Continuance of Trial Date; Sanctions for Failure to Proceed.

No continuance of a scheduled trial date will be granted except by order of the Court issued in response to a motion made in accordance with the provisions of Civil L.R. 7. Failure of a party to proceed with the trial on the scheduled trial date may result in the imposition of appropriate sanctions, including dismissal or entry of default. Jury costs may be assessed as sanctions against a party or the party's attorney for failure to proceed with a scheduled trial or failure to provide the Court with timely written notice of a settlement.

Commentary

Counsel should consult any Standing Orders issued by the assigned Judge with respect to the conduct of trial. Such orders are available from the Clerk.

54. COSTS

54-1. Filing of Bill of Costs.

(a) Time for Filing and Content. No later than 14 days after entry of judgment or order under which costs may be claimed, a prevailing party claiming taxable costs must serve and file a bill of costs. The bill must state separately and specifically each item of taxable costs claimed. It must be supported by an affidavit, pursuant to 28 U.S.C. §1924, that the costs are correctly stated, were necessarily incurred, and are allowable by law. Appropriate documentation to support each item claimed must be attached to the bill of costs.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(b) Effect of Service. Service of bill of costs shall constitute notice pursuant to FRCivP 54(d), of a request for taxation of costs by the Clerk.

(c) Waiver of Costs. Any party who fails to file a bill of costs within the time period provided by this rule will be deemed to have waived costs.

Commentary

The 14-day time period set by this rule is inapplicable where the statute authorizing costs establishes a different time deadline, (e.g., 28 U.S.C. § 2412(d)(1)(B) setting 30 days from final judgment as time limit to file for fees under Equal Access to Justice Act).

54-2. Objections to Bill of Costs.

(a) Time for Filing Objections. Within 14 days after service by any party of its bill of costs, the party against whom costs are claimed must serve and file any specific objections to any item of cost claimed in the bill, succinctly setting forth the grounds of each objection.

(b) Meet and Confer Requirement. Any objections filed under this Local Rule must contain a representation that counsel met and conferred in an effort to resolve disagreement about the taxable costs claimed in the bill, or that the objecting party made a good faith effort to arrange such a conference.

54-3. Standards for Taxing Costs.

(a) Fees for Filing and Service of Process.

(1) The Clerk's filing fee is allowable if paid by the claimant.

(2) Fees of the marshal as set forth in 28 U.S.C. § 1921 are allowable to the extent actually incurred. Fees for service of process by someone other than the marshal acting pursuant to FRCivP 4(c), are allowable to the extent reasonably required and actually incurred.

(b) Reporters' Transcripts.

(1) The cost of transcripts necessarily obtained for an appeal is allowable.

(2) The cost of a transcript of a statement by a Judge from the bench which is to be reduced to a formal order prepared by counsel is allowable.

(3) The cost of other transcripts is not normally allowable unless, before it is incurred, it is approved by a Judge or stipulated to be recoverable by counsel.

(c) Depositions.

(1) The cost of an original and one copy of any deposition (including video taped depositions) taken for any purpose in connection with the case is allowable.

(2) The expenses of counsel for attending depositions are not allowable.

(3) The cost of reproducing exhibits to depositions is allowable if the cost of the deposition is allowable.

(4) Notary fees incurred in connection with taking depositions are allowable.

(5) The attendance fee of a reporter when a witness fails to appear is allowable if the claimant made use of available process to compel the attendance of the witness.

(d) Reproduction and Exemplification.

(1) The cost of reproducing and certifying or exemplifying government records used for any purpose in the case is allowable.

(2) The cost of reproducing disclosure or formal discovery documents when used for any purpose in the case is allowable.

(3) The cost of reproducing copies of motions, pleadings, notices, and other routine case papers is not allowable.

(4) The cost of reproducing trial exhibits is allowable to the extent that a Judge requires copies to be provided.

(5) The cost of preparing charts, diagrams, videotapes and other visual aids to be used as exhibits is allowable if such exhibits are reasonably necessary to assist the jury or the Court in understanding the issues at the trial.

(e) Witness Expenses. *Per diem*, subsistence and mileage payments for witnesses are allowable to the extent reasonably necessary and provided for by 28 U.S.C. § 1821. No other witness expenses, including fees for expert witnesses, are allowable.

(f) Fees for Masters and Receivers. Fees to masters and receivers are allowable.

(g) Costs on Appeal. Such other costs, not heretofore provided for, authorized under Rule 39, Federal Rules of Appellate Procedure, are allowable.

(h) Costs of Bonds and Security. Premiums on undertaking bonds and costs of providing security required by law, by order of a Judge, or otherwise necessarily incurred are allowable.

54-4. Determination of Taxable Costs.

(a) Supplemental Documentation. The Clerk may require and consider further affidavits and documentation as necessary to determine allowable costs.

(b) Taxation of Costs. No sooner than 14 days after a bill of costs has been filed, the Clerk shall tax costs after considering any objections filed pursuant to Civil L.R. 54-2. Costs shall be taxed in conformity with 28 U.S.C. §§ 1920 and 1923, Civil L.R. 54-3, and all other applicable statutes. On the bill of costs or in a separate notice, the Clerk shall indicate which, if any of the claimed costs are allowed and against whom such costs are allowed. The Clerk shall serve copies of the notice taxing costs on all parties on the day in which costs are taxed.

54-5. Motion for Attorney's Fees.

(a) Time for Filing Motion. Unless otherwise ordered by the Court after a stipulation to enlarge time under Civil L.R. 6-2 or a motion under Civil L.R. 6-3, motions for awards of attorney's fees by the Court must be served and filed within 14 days of entry of judgment by the District Court. Filing an appeal from the judgment does not extend the time for filing a motion. Counsel for the respective parties must meet and confer for the purpose of resolving all disputed issues relating to attorney's fees before making a motion for award of attorney's fees.

Commentary

A short time period of only 14 days from the entry of judgment for filing a motion for attorney's fees is set by FRCivP 54(d)(2)(B). Counsel who desire to seek an order extending the time to file such a motion, either by stipulation (See Civil L.R. 6-2) or by motion (See Civil L.R. 6-3), are advised to seek such an order as expeditiously as practicable.

(b) Form of Motion. Unless otherwise ordered, the motion for attorney fees must be supported by declarations or affidavits containing the following information:

(1) A statement that counsel have met and conferred for the purpose of attempting to resolve any disputes with respect to the motion or a statement that no conference was held, with certification that the applying attorney made a good faith effort to arrange such a conference, setting forth the reason the conference was not held; and

(2) A statement of the services rendered by each person for whose services fees are claimed together with a summary of the time spent by each person, and a statement describing the manner in which time records were maintained. Depending on the circumstances, the Court may require production of an abstract of or the contemporary time records for inspection, including *in camera* inspection, as the Judge deems appropriate; and

(3) A brief description of relevant qualifications and experience and a statement of the customary hourly charges of each such person or of comparable prevailing hourly rates or other indication of value of the services.

56. SUMMARY JUDGMENT

56-1. Separate or Joint Statement of Undisputed Facts.

(a) No Separate Statement Allowed Without Court Order. Unless required by the assigned Judge, no separate statement of undisputed facts or joint statement of undisputed facts shall be submitted.

(b) Procedure if Joint Statement Ordered. If the assigned Judge orders the submission of a joint statement of undisputed facts, the parties shall confer and submit, on or before a date set by the assigned Judge, a joint statement of undisputed facts. If the nonmoving party refuses to join in the statement, the moving party will nevertheless be permitted to file the motion, accompanied by a separate declaration of counsel explaining why a joint statement was not filed. Whether or not sanctions should be imposed for failure to file a joint statement of undisputed facts is a matter within the discretion of the assigned Judge.

56-2. Issues Deemed Established.

Statements contained in an order of the Court denying a motion for summary judgment or summary adjudication shall not constitute issues deemed established for purposes of the trial of the case, unless the Court so specifies.

58. ENTRY OF JUDGMENT

58-1. Entry of Judgment in Private Securities Actions.

In any private action subject to section 27(c)(1) of the Securities Act, 15 U.S.C. § 77z-1(c)(1), and section 21D(c)(1) of the Securities Exchange Act, 15 U.S.C. § 78u-4(c)(1), the findings required thereunder shall be entered by separate order; until entry of such order, the Clerk shall not enter judgment in the action.

65. INJUNCTIONS

65-1. Temporary Restraining Orders.

(a) Documentation Required. An *ex parte* motion for a temporary restraining order must be accompanied by:

(1) A copy of the complaint;

(2) A separate memorandum of points and authorities in support of the motion;

(3) The proposed temporary restraining order; and

(4) Such other documents in support of the motion which the party wishes the Court to consider.

(b) Notice to Opposition of *Ex Parte* Motion. Unless relieved by order of a Judge for good cause shown, on or before the day of an *ex parte* motion for a temporary restraining order, counsel applying for the temporary restraining order must deliver notice of such motion to opposing counsel or party.

Cross Reference

See Civil L. R. 5-5(a)(2) *"Manner of Service,"* regarding time and methods for delivery of pleadings and papers.

(c) Form of Temporary Restraining Order. No temporary restraining order will be issued except with an order to show cause fixing the time for hearing a motion for a preliminary injunction, which shall be scheduled pursuant to FRCivP 65(b). Proposed orders submitted under this Rule must provide a place for the Judge to fix the time within which the restraining order and all supporting pleadings and papers must be served upon the adverse party of any opposing papers.

65-2. Motion for Preliminary Injunction.

Motions for preliminary injunctions unaccompanied by a temporary restraining order are governed by Civil L.R. 7-2.

65.1 SECURITY

65.1-1. Security.

(a) When Required. Upon demand of any party, where authorized by law and for good cause shown, the Court may require any party to furnish security for costs which can be awarded against such party in an amount and on such terms as the Court deems appropriate.

(b) Qualifications of Surety. Every bond must have as surety either:

(1) A corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under 31 U.S.C. §§ 9301-9306;

(2) A corporation authorized to act as surety under the laws of the State of California;

(3) Two natural persons, who are residents of the Northern District of California, each of whom separately own real or personal property not exempt from execution within the district. (The total value of these two persons' property should be sufficient to justify the full amount of the suretyship); or

(4) A cash deposit of the required amount, made with the Clerk and filed with a bond signed by the principals.

(c) Court Officer as Surety. No Clerk, marshal or other employee of the Court may be surety on any bond or other undertaking in this Court. No member of the bar appearing for a party in any pending action, may be surety on any bond or other undertaking in that action. However, cash deposits on bonds may be made by members of the bar on certification that the funds are the property of a specified person who has signed as surety on the bond. Upon exoneration of the bond, such monies shall be returned to the owner and not to the attorney.

(d) Examination of Surety. Any party may apply for an order requiring any opposing party to show cause why it should not be required to furnish further or different security, or to require the justification of personal sureties.

66. PREJUDGMENT REMEDIES

66-1. Appointment of Receiver.

(a) Time for Motion. A motion for the appointment of a receiver in a case may be made after the complaint has been filed and the summons issued.

(b) Temporary Receiver. A temporary receiver may be appointed with less notice than required by Civil L.R. 7-2 or, in accordance with the requirements and limitations of FRCivP 65(b), without notice to the party sought to be subjected to a receivership or to creditors.

(c) Permanent Receiver. Concurrent with the appointment of a temporary receiver or upon motion noticed in accordance with the requirements of Civil L.R. 7-2, the Judge may, upon a proper showing, issue an order to show cause, requiring the parties and the creditors to show cause why a permanent receiver should not be appointed.

(d) Parties to be Notified. Within 7 days of the issuance of the order to show cause, the defendant must provide to the temporary receiver or, if no temporary receiver has been appointed, to the plaintiff, a list of the defendant's creditors, and their addresses. Not less than 14 days before the hearing on the order to show cause, notice of the hearing must be mailed to the listed creditors by the temporary receiver, or, if none, by the plaintiff.

(e) Bond. The Court may require any appointed receiver to furnish a bond in such amount as the Court deems reasonable.

66-2. Employment of Attorneys, Accountants or Investigators.

The receiver may not employ an attorney, accountant or investigator without a Court order. The compensation of all such employees shall be fixed by the Court.

66-3. Motion for Fees.

All motions for fees for services rendered in connection with a receivership must set forth in reasonable detail the nature of the services. The motion must include as an exhibit an itemized record of time spent and services rendered and will be heard in open Court.

66-4. Deposit of Funds.

A receiver must deposit all funds received in the institution selected by the Court as its designated depository pursuant to 28 U.S.C. § 2041, entitling the account with the name and number of the action. At the end of each month, the receiver must deliver to the Clerk a statement of account and the canceled checks.

66-5. Reports.

Within 30 days of appointment, a permanent receiver must serve and file with the Court a verified report and petition for instructions. The report and petition must contain a summary of the operations of the receiver, an inventory of the assets and their appraised value, a schedule of all receipts and disbursements, and a list of all creditors, their addresses and the amounts of their claims. The petition must contain the receiver's recommendation as to the continuance of the receivership and reasons therefor. At the hearing, the Judge will determine whether the receivership will be continued and, if so, will fix the time for future reports of the receiver.

66-6. Notice of Hearings.

The receiver must give all interested parties notice of the time and place of hearings of the following in accordance with Civil L.R. 7-2:

(a) Petitions for instructions;

(b) Petitions for the payment of dividends to creditors;

(c) Petitions for confirmation of sales of property;

(d) Reports of the receiver;

(e) Motions for fees of the receiver or of any attorney, accountant or investigator, the notice to state the services performed and the fee requested; and

(f) Motions for discharge of the receiver.

72. MAGISTRATE JUDGES; PRETRIAL ORDERS

72-1. Powers of Magistrate Judge.

Each Magistrate Judge appointed by the Court is authorized to exercise all powers and perform all duties conferred upon Magistrate Judges by 28 U.S.C. § 636, by the local rules of this Court and by any written order of a District Judge designating a Magistrate Judge to perform specific statutorily authorized duties in a particular action.

72-2. Objection to Nondispositive Pretrial Decision.

Unless otherwise ordered by the assigned District Judge, no response need be filed and no hearing will be held concerning an objection to a Magistrate Judge's order pursuant to FRCivP 72(a) and 28 U.S.C. § 636(b)(1)(A). The District Judge may deny the objection by written order at any time, but may not grant it without first giving the opposing party an opportunity to brief the matter. If no order denying the motion or setting a briefing schedule is made within 14 days of filing the objection, the objection shall be deemed denied. The Clerk shall notify parties when an objection has been deemed denied.

72-3. Objection to Dispositive Decision.

(a) Form of Objection and Response. Any objection filed pursuant to FRCivP 72(b) and 28 U.S.C. § 636(b)(1)(B) must be accompanied by a motion for *de novo* determination, specifically identify the portions of the Magistrate Judge's findings, recommendation or report to which objection is made and the reasons and authority therefor. To the extent consistent with FRCivP 72(b) and 28 U.S.C. § 636, Civil L.R. 7-2 governs presentation and consideration of such motions and objections.

(b) Motion for Expansion of Record or for Evidentiary Hearing. At the time a party files an objection or response, the party may make a motion for expansion or addition to the record of the proceedings before the Magistrate Judge or for an evidentiary hearing.

(c) Ruling on Objection Limited to Record before Magistrate Judge. Except when the Court grants a motion for expansion or addition to the record or for an evidentiary hearing, the Court's review and determination of objections filed pursuant to Civil L.R. 72-3(a) shall be upon the record of the proceedings before the Magistrate Judge.

Commentary

Procedures governing review of a pretrial order by a Magistrate Judge on matters not dispositive of a claim or defense are governed by FRCivP 72(a) and 28 U.S.C. § 636(b)(1)(A). Procedures governing consideration of a Magistrate Judge's findings, report and recommendations on pretrial matters dispositive of a claim or defense are governed by FRCivP 72(b) and 28 U.S.C. § 636(b)(1)(B) & (C).

73. MAGISTRATE JUDGES; TRIAL BY CONSENT

73-1. Time for Consent to Magistrate Judge.

(a) Cases Initially Assigned to a Magistrate Judge. In cases that are initially assigned to a magistrate judge, unless the magistrate judge has set a different deadline in an individual case:

(1) Parties must either file written consent to the jurisdiction of the magistrate judge, or request reassignment to a district judge, by the deadline for filing the initial case management conference statement.

(2) If a motion that cannot be heard by the magistrate judge without the consent of the parties, pursuant to 28 U.S.C. § 636(c), is filed prior to the initial case management conference, the parties must either file written consent to the jurisdiction of the magistrate judge, or request reassignment to a district judge, no later than 7 days after the motion is filed.

(b) Cases Initially Assigned to a District Judge. In cases that are assigned to a district judge, the parties may consent at any time to the Court reassigning the case to a magistrate judge for all purposes, including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

77. DISTRICT COURT AND CLERK

77-1. Locations and Hours.

(a) Locations.

(1) The Office of the Clerk of this Court which serves the San Francisco Courthouse is located at 450 Golden Gate Avenue, San Francisco, California 94102.

(2) The Office of the Clerk of this Court which serves the Oakland Courthouse is located at 1301 Clay Street, Oakland, California 94612.

(3) The Office of the Clerk of this Court which serves the San Jose Courthouse is located at 280 South First Street, San Jose, California 95113.

(b) Hours. The regular hours of the Offices of the Clerk are from 9:00 a.m. to 4:00 p.m. each day except Saturdays, Sundays, and Court holidays.

Commentary

See Civil L.R. 5-3 regarding after-hours drop box filing.

77-2. Orders Grantable by Clerk.

The Clerk is authorized to sign and enter orders specifically allowed to be signed by the Clerk under the Federal Rules of Civil Procedure and these local rules. In addition, the Clerk may sign and enter the following orders without further direction of a Judge:

(a) Orders specifically appointing persons to serve process in accordance with FRCivP 4;

(b) Orders on consent noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default;

(c) Orders of dismissal on consent, with or without prejudice, except in cases to which FRCivP 23, 23.1, or 66 apply;

(d) Orders establishing a schedule for case management in accordance with Civil L.R. 16;

(e) Orders relating or reassigning cases on behalf of the Executive Committee; and

(f) Orders taxing costs pursuant to Civil L.R. 54-4.

Cross Reference

See ADR L.R. 4-11(d) "*Nonbinding Arbitration; Entry of Judgment on Award.*"

77-3. Photography and Public Broadcasting.

Unless allowed by a Judge or a Magistrate Judge with respect to his or her own chambers or assigned courtroom for ceremonial purposes, the taking of photographs, public broadcasting or televising, or recording for those purposes in the courtroom or its environs, in connection with any judicial proceeding, is prohibited. Electronic transmittal of courtroom proceedings and presentation of evidence within the confines of the courthouse is permitted, if authorized by the Judge or Magistrate Judge. The term "environs," as used in this rule, means all floors on which chambers, courtrooms or on which Offices of the Clerk are located, with the exception of any space specifically designated as a Press Room. Nothing in this rule is intended to restrict the use of electronic means to receive or present evidence during Court proceedings.

77-4. Official Notices.

The following media are designated by this Court as its official means of giving public notice of calendars, General Orders, employment opportunities, policies, proposed modifications of these local rules or any matter requiring public notice. The Court may designate any one or a combination of these media for purposes of giving notice as it deems appropriate:

(a) Bulletin Board. A bulletin board for posting of official notices shall be located at the Office of the Clerk at each courthouse of this district.

(b) Internet Site. The Internet site, located at http://www.cand.uscourts.gov, is designated as the district's official Internet site and may be used for the posting of official notices.

(c) Newspapers. The following newspapers are designated as official newspapers of the Court for the posting of official notices:

(1) The Recorder; or

(2) The San Francisco Daily Journal; or

(3) The San Jose Post-Record, for matters pending in the San Jose Division, in addition to the newspapers listed in subparagraphs (1) and (2); or

(4) The Times Standard, for matters pending before a Judge sitting in Eureka.

77-5. Security of the Court.

The Court, or any Judge, may from time to time make such orders or impose such requirements as may be reasonably necessary to assure the security of the Court and of all persons in attendance.

77-6. Weapons in the Courthouse and Courtroom.

(a) Prohibition on Unauthorized Weapons. Only the United States Marshal, Deputy Marshals and Court Security Officers are authorized to carry weapons within the confines of the courthouse, courtrooms, secured judicial corridors, and chambers of the Court. When the United States Marshal deems it appropriate, upon notice to any affected Judge, the Marshal may authorize duly authorized law enforcement officers to carry weapons in the courthouse or courtroom.

(b) Use of Weapons as Evidence. In all cases in which a weapon is to be introduced as evidence, before bringing the weapon into a courtroom, the United States Marshal or Court Security Officer on duty must be notified. Before a weapon is brought into a courtroom, it must be inspected by the United States Marshal or Court Security Officer to ensure that it is inoperable, appropriately marked as evidence and the assigned Judge notified

77-7. Court Library.

The Court maintains a law library primarily for the use of Judges and personnel of the Court. In addition, attorneys admitted to practice in this Court may use the library where circumstances require for actions or proceedings pending in the Court. The library is operated in accordance with such rules and regulations as the Court may from time to time adopt.

77-8. Complaints Against Judges.

Pursuant to 28 U.S.C. § 372(c), any person alleging that a Judge of this Court has engaged in conduct prejudicial to the effective and expeditious administration of the business of the Court or alleging that a Judge is unable to discharge all of the duties of office by reason of mental or physical disability may file with the Clerk of the Court of Appeals for the Ninth Circuit a written complaint containing a brief statement of the facts constituting such conduct. The Clerk of this Court must supply to any person wishing to file such a complaint:

(a) A copy of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability;

(b) A copy of the complaint form required by Rule 2(a), Ninth Circuit

Judicial Council Rules for Complaints of Judicial Misconduct to be used for filing such a complaint; and

(c) A pre-addressed envelope to the Clerk of the Ninth Circuit Court of Appeals, marked "Complaint of Misconduct and/or Disability" pursuant to Rule 2(h), Rules of Judicial Council of Ninth Circuit Governing Complaints of Misconduct.

79. BOOKS AND RECORDS KEPT BY THE CLERK

79-1. Transcript and Designation of Record on Appeal.

If a party orders a transcript, in accordance with and within the time provided by FRAppP 10(b) and fails to make satisfactory arrangements for payment of such transcript with the court reporter at or before the time of ordering such transcript, the court reporter must promptly notify the Clerk and such party. Within 14 days after receipt of such notice from the court reporter, the party ordering a transcript must make satisfactory arrangements for payment. The reporters' transcript must be filed within 28 days of the date such arrangements have been made. Failure to make satisfactory arrangements for payment within the time specified shall be certified by the Clerk of the Court to the Court of Appeals for the Ninth Circuit as a failure by the party to comply with FRAppP 10(b)(4).

Cross Reference

See Ninth Circuit Rule 10-3 "*Ordering the Reporter's Transcript*."

79-2. Exclusions from Record on Appeal.

The Clerk will not include in the record on appeal the following items unless their inclusion is specifically requested in writing and supported by a brief statement of the reason therefor:

(a) Summons and returns;

(b) Subpoenas and returns;

(c) Routine procedural motions and orders, such as motions for extensions of or shortening time; and

(d) Routine procedural notices.

79-3. Files; Custody and Withdrawal.

All files of the Court shall remain in the custody of the Clerk and no record or paper belonging to the files of the Court may be taken from the custody of the Clerk without a special order of a Judge and a proper receipt signed by the person obtaining the record or paper. No such order will be made except in extraordinary circumstances.

79-4. Custody and Disposition of Exhibits and Transcripts.

(a) Custody of Exhibits During Trial or Evidentiary Hearing. Unless the Court directs otherwise, each exhibit admitted into evidence during a trial or other evidentiary proceeding shall be held in the custody of the Clerk.

(b) Removal of Exhibits Upon Conclusion of Proceeding. At the conclusion of a proceeding in this Court, any exhibit placed in the custody of the Clerk pursuant to Civil L.R. 79-4(a) must be removed by the party which submitted it into evidence. Unless otherwise permitted by the Court, no exhibit may be removed earlier than:

(1) 14 days after expiration of the time for filing a notice of appeal, if no notice of appeal is filed in the proceeding by any party; or

(2) 14 days after a mandate issues from the Court of Appeals, if an appeal was taken by any party to the proceeding.

(c) Disposition of Unclaimed Exhibits. Unless otherwise directed by the Court, the Clerk may destroy or otherwise dispose of exhibits not reclaimed within 21 days after the time set for removal under this rule.

79-5. Filing Documents Under Seal.

(a) Specific Court Order Required. No document may be filed under seal, i.e., closed to inspection by the public, except pursuant to a Court order that authorizes the sealing of the particular document, or portions thereof. A sealing order may issue only upon a request that establishes that the document, or portions thereof, is privileged or protectable as a trade secret or otherwise entitled to protection under the law, [hereinafter referred to as "sealable."] The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(b) or (c). A stipulation, or a blanket protective order that allows a party to designate documents as sealable, will not suffice to allow the filing of documents under seal. Ordinarily, more than one copy of a particular document should not be submitted for filing under seal in a case.

Commentary

As a public forum, the Court has a policy of providing to the public full access to papers filed in the Office of the Clerk. The Court recognizes that, in some cases, the Court must consider confidential information. In other cases, law or regulation requires a document to be filed under seal, e.g., a False Claims Act complaint. This rule governs requests to file under seal documents or things, whether pleadings, memoranda, declarations, documentary evidence or other evidence. Proposed protective orders, in which parties establish a procedure for designating and exchanging confidential information, must incorporate the procedures set forth in this rule if, in the course of proceedings in the case, a party proposes to submit sealable information to the Judge. This rule is designed to ensure that the assigned Judge receives in chambers a confidential copy of the unredacted and complete document, annotated to identify which portions are sealable, that a separate unredacted and sealed copy is maintained for appellate review, and that a public copy is filed and available for public review that has the minimum redactions necessary to protect sealable information.

(b) Request to File Entire Document Under Seal. Counsel seeking to file an entire document under seal must:

(1) File and serve an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11, accompanied by a declaration establishing that the entire document is sealable;

(2) Lodge with the Clerk and serve a proposed order sealing the document;

(3) Lodge with the Clerk and serve the entire document, contained in an 8 ½- inch by 11-inch sealed envelope or other suitable sealed container, with a cover sheet affixed to the envelope or container, setting out the information required by Civil L.R. 3-4(a) and (b) and prominently displaying the notation: "DOCUMENT SUBMITTED UNDER SEAL";

(4) Lodge with the Clerk for delivery to the Judge's chambers a second copy of the entire document, in an identical labeled envelope or container.

(c) Request to File a Portion of a Document Under Seal. If only a portion of a document is sealable, counsel seeking to file that portion of the document under seal must:

(1) File and serve an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11, accompanied by a declaration establishing that a portion of the document is sealable;

(2) Lodge with the Clerk and serve a proposed order that is narrowly tailored to seal only the portion of the document which is claimed to be sealable;

(3) Lodge with the Clerk and serve the entire document, contained in an 8 ½- inch by 11-inch sealed envelope or other suitable sealed container, with a cover sheet affixed to the envelope or container, setting out the information required by Civil L.R. 3-4(a) and (b) and prominently displaying the notation: "DOCUMENT SUBMITTED UNDER SEAL." The sealable portions of the document must be identified by notations or highlighting within the text;

(4) Lodge with the Clerk for delivery to the Judge's chambers a second copy of the entire document, in an identical labeled envelope or container, with the sealable portions identified;

(5) Lodge with the Clerk and serve a redacted version of the document that can be filed in the public record if the Court grants the sealing order.

Commentary

The Clerk shall stamp the sealed envelope or container containing the lodged document, and any redacted version, as received on the date submitted. Upon receipt of an order to file the lodged document under seal, the Clerk shall file-stamp the sealed envelope or container containing the document, the document, and any redacted version of the document as of the date it was originally lodged with the Court, rather than as of the date that the Court approved its filing under seal. Away from public view, the Clerk shall remove the item from the envelope, place a dated file-stamp on the original document, enter it on the docket, and place the document in a sealed folder which shall be maintained in a secure location at the courthouse of the assigned Judge or at the national Archives and Records Administration or other Court-designated depository. The Clerk will file any redacted version of the document in the public record.

(d) Filing a Document Designated Confidential by Another Party. If a party wishes to file a document that has been designated confidential by another party pursuant to a protective order, or if a party wishes to refer in a memorandum or other filing to information so designated by another party, the submitting party must file and serve an Administrative Motion for a sealing order and lodge the document, memorandum or other filing in accordance with this rule. If only a portion of the document, memorandum or other filing is sealable, the submitting party must also lodge with the Court a redacted version of the document, memorandum or other filing to be placed in the public record if the Court approves the requested sealing order. Within 7 days thereafter, the designating party must file with the Court and serve a declaration establishing that the designated information is sealable, and must lodge and serve a narrowly tailored proposed sealing order, or must withdraw the designation of confidentiality. If the designating party does not file its responsive declaration as required by this subsection, the document or proposed filing will be made part of the public record.

(e) Request Denied. If a request to file under seal is denied in part or in full, neither the lodged document nor any proposed redacted version will be filed. The Clerk will notify the submitting party, hold the lodged document for three days for the submitting party to retrieve it, and thereafter, if it is not retrieved, dispose of it. If the request is denied in full, the submitting party may retain the document and not make it part of the record in the case, or, within 4 days, re-submit the document for filing in the public record. If the request is denied in part and granted in part, the party may resubmit the document in a manner that conforms to the Court's order and this rule.

(f) Effect of Seal. Unless otherwise ordered by the Court, any document filed under seal shall be kept from public inspection, including inspection by attorneys and parties to the action, during the pendency of the case. Any document filed under seal in a civil case shall be open to public inspection without further action by the Court 10 years from the date the case is closed. However, a party that submitted documents that the Court placed under seal in a case may, upon showing good cause at the conclusion of the case, seek an order that would continue the seal until a specific date beyond the 10 years provided by this rule. Nothing in this rule is intended to affect the normal records destruction policy of the United States Courts. The chambers copy of sealed documents will be disposed of in accordance with the assigned Judge's discretion. Ordinarily these copies will be recycled, not shredded, unless special arrangements are made.

83. AMENDMENT OF THE LOCAL RULES

83-1. Method of Amendment.

The local rules of this Court may be modified or amended by a majority vote of the active Judges of the Court in accordance with the procedures set forth in this rule. Any proposed substantive modification or amendment of these local rules must be submitted to a Local Rules Advisory Committee for its review, except that amendments for form, style, grammar or consistency may be made without submission to an Advisory Committee.

83-2. Advisory Committee on Rules.

(a) Appointment. Pursuant to 28 U.S.C. § 2077(b), the Chief Judge shall appoint members of a Local Rules Advisory Committee to serve such terms as the Chief Judge shall designate.

(b) Purpose. The Local Rules Advisory Committee shall elect a chair, who shall convene the committee for purposes of making a report and recommendation to the Court with respect to the following matters:

(1) The consistency of the local rules of the Court with the United States Constitution, Acts of Congress, the Federal Rules, General Orders of the Court and Standing Orders of Judges of the Court;

(2) Modification of the local rules of the Court;

(3) Matters referred by the Chief Judge pursuant to Civil L.R. 83-3; and

(4) Means to facilitate understanding of the local rules by the bar and the public.

(c) Action by the Court. Upon receipt of the report of the Local Rules Advisory Committee, the Court shall consider the report and take such action as the Court deems appropriate.

(d) Submission of Report to Judicial Council. Pursuant to FRCivP 83, the Chief Judge shall submit any report by the Advisory Committee to the Judicial Council of the Ninth Circuit, together with a report which indicates the Court's disposition of the issues addressed in the report.

83-3. Procedure for Public Comment on Local Rules.

(a) Publication. Before becoming effective, any proposed substantive modification of the local rules shall be subject to public comment in accordance with FRCivP 83.

(b) Public Submissions. Any person may submit written suggestions for amendments to the local rules. Such suggestions shall be directed to the Chief Judge, who shall refer the matter to the Local Rules Advisory Committee for consideration. Upon such referral, the Local Rules Advisory Committee shall acknowledge receipt of the suggestion to the author and evaluate it in accordance with Civil L.R. 83-2.

Commentary

The 1985 Notes of the Advisory Committee on Rules suggests that in appropriate circumstances, the requirement in FRCivP 83 that proposed rules be subject to notice and public comment can be "accomplished through the mechanism of an 'Advisory Committee' . . ." on Rules for the district.